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सं. 15] नई दिल्ली, अप्रैल 3—अप्रैल 9, 2016, शनिवार/चैत्र 14—चैत्र 20, 1938
No. 15] NEW DELHI, APRIL 3—APRIL 9, 2016, SATURDAY/CHAITRA 14—CHAITRA 20, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण)

नई दिल्ली, 6 अप्रैल, 2016

का.आ. 612.—इस प्राधिकरण की अधिसूचना की निरंतरता में श्रीमती विजय शर्मा को इस प्राधिकरण में पी.बी.-3 रु. 15600-39100. 6600 दिनांक 14 फरवरी, 2016 से एक वर्ष की अवधि या कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन संख्या 6/8/2009-स्था. (पे बैंड-2) दिनांक 17.6.2010 के अनुसार निर्धारित नियम और शर्तों पर एक वर्ष तक या अगले आदेश तक या कार्यालय के बन्द होने तक जो भी पूर्व घटित/पहले हो, प्रतिनियुक्ति के आधार पर प्रमुख निजी सचिव के पद पर आगे बढ़ाया जाता है।

[फा. सं. 1/2/2011-प्रशा.]

विजय शर्मा, रजिस्ट्रार व प्रमुख कार्यालय

MINISTRY OF FINANCE

(APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION)

New Delhi, the 6th April, 2016

S.O. 612.—In continuation of this Authority's Notification of even number dated 12.02.2015, the term of deputation of Smt Vijay Sharma, a Sr. Private Secretary of Income Tax Appellate Tribunal as Principal Private Secretary in this Authority on deputation basis in the PB-3 Rs.15600-39100+6600 (Grade Pay) is hereby extended for a further period of one year w.e.f. 14.02.2016 to 13.02.2017 or till abolition of this Authority or until further orders, whichever is earlier, on the same terms and conditions, determined as per the instructions contained in DOPT OM. No.6/8/2009-Esdt.(Pay-II) dated 17.06.2010 as amended from time to time.

[F.No. 1/2/2011-Admn.]

VIJAY SHARMA, Registrar & HOO

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 मार्च, 2016

का.आ. 613.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मध्य प्रदेश राज्य स्थित जबलपुर में केन्द्रीय अन्वेषण ब्यूरो द्वारा विचारण न्यायालयों में उन्हें सौंपे गए दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित मामलों का अभियोजन करने तथा विधि द्वारा संस्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में उन मामलों से उत्पन्न प्रासंगिक अन्य मामलों में अपील/पुनरीक्षण हेतु निम्नलिखित अधिवक्ताओं को उनकी नियुक्ति की तारीख से तीन वर्ष की अवधि तक अथवा अधिवक्ताओं को सौंपे गए मामलों के निपटाने तक, जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है:

सर्वश्री

- (1) प्रतीश जैन
- (2) एन.पी. चौधरी
- (3) सुश्री अंजली बनर्जी
- (4) सुश्री मंजु पिल्ले

[फा. सं. 225/1/2016-एवीडी-II]

मो. नदीम, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 31st March, 2016

S.O. 613.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following Advocates as Special Public Prosecutor for conducting prosecution of cases instituted by Delhi Special Police Establishment (CBI) in the State of Madhya Pradesh at Jabalpur as entrusted to them by the Central Bureau of Investigation in the trial courts and appeals/revisions or other matters arising out of these cases in revisional or appellate courts established by law for a period of three years from the date of appointment or disposal of the cases entrusted to the counsels whichever is earlier.

S/Shri

- (1) Pratish Jain
- (2) N.P. Choudhary
- (3) Ms. Anjali Banerjee
- (4) Ms. Manju Pillay

[F. No. 225/1/2016-AVD-II]

MD. NADEEM, Under Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय

(इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी विभाग)

नई दिल्ली, 4 फरवरी, 2016

का.आ. 614.—केन्द्र सरकार, एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी विभाग के संबद्ध कार्यालय मानकीकरण परीक्षण तथा गुणवत्ता प्रमाणन निदेशालय के अगरतला स्थित अधीनस्थ कार्यालय, इलेक्ट्रॉनिकी परीक्षण तथा विकास केंद्र, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. 7(2)/2005-हि.अ.]

राजीव कुमार, संयुक्त सचिव

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Electronics and Information Technology)

New Delhi, the 4th February, 2016

S.O. 614.—In pursuance of Sub-Rule (4) of the Rule 10 of the Official Language (Use for Official purposes of the Union) Rules, 1976, the Central Government hereby notifies the Electronics Test and Development Centre, a subordinate office of the Standardisation Testing and Quality Certification Directorate, an attached office of the Department of Electronics & Information Technology, located at Agartala, whose more than 80% staff have acquired the working knowledge of Hindi.

[No. 7(2)/2005-H.S.]

RAJIV KUMAR, Jt. Secy.

**MINISTRY OF WATER RESOURCES, RIVER DEVELOPMENT AND GANGA REJUVENATION
CORRIGENDUM**

New Delhi, the 30th March, 2016

S.O. 615.—In the notification G.S.R. No. 27 dated 11.02.2016 of the Ministry of Water Resources published in Part II, Section 3, Sub-section (i) of the Gazette of India, the following pages shall be modified as under :

Page No. 179 : Clause (11) may be read as “प्रयोगशाला सहायक श्रेणी III जिसने उस पद नियमित आधार पर नियुक्ति के पश्चात् पांच वर्ष नियमित सेवा की हो।” instead of “प्रयोगशाला सहायक श्रेणी I जिसने उस पद पर नियमित आधार पर नियुक्ति के पश्चात् पांच वर्ष नियमित सेवा की हो।”

Page No. 181 : Clause (11) may be read as “Laboratory Assistant Grade-III with five years’ regular service in the grade” instead of “Laboratory Assistant Grade-II with five years’ regular service in the grade”

[F. No. 2/28/98-E. II]

S. K. KATARIA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 मार्च, 2016

का.आ. 616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 28/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/479/1995-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th March, 2016

S.O. 616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 28 of 1997) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. TISCO and their workmen, which was received by the Central Government on 30.03.2016.

[No. L-20012/479/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1, DHANBAD**In the matter of reference U/s 10 (1) (d) (2A) of
I.D. Act, 1947**Reference No. 28/1997**Employer in relation to the management of
Jamadoba Colliery, M/s. TISCO**AND**

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer**Appearances:**

For the Employers : Sri D.K. Verma, Advocate

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 10/03/2016

AWARD

By Order No.L-20012/479/1995-IR (C-I), date 09/10-01-1997, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10

of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Jamadoba Colliery of M/s. TISCO in not providing employment to the dependent after the termination of the service of Bhada Ram on medical ground is justified ? If not, to what relief is the workman entitled?”

2. After receipt of the reference, parties are noticed, Though they took steps for certain dates, subsequently did not appears nor take any interest in the case by the workman. It is presumed that the disputes between parties have been resolved in the meantime, Hence No Dispute Award is passed.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 मार्च, 2016

का.आ. 617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 21/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/87/1995-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th March, 2016

S.O. 617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 21 of 1997) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.03.2016.

[No. L-20012/87/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1, DHANBAD**In the matter of reference U/s 10 (1) (d) (2A) of
I.D. Act, 1947**Reference No. 21/1997**Employer in relation to the management of
Barora Area, M/s. BCCL**AND**

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the Workman : Shri D. Mukherjee, Advocate

State : Jharkhand Industry : Coal

Dated : 09/03/2016

AWARD

By Order No.L-20012/87/1995-IR (C-I), dated.06/01/1997, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the demand by the union for placement of Shri R.A.P. Singh as Foreman (E&T) in Tech. Gr. B w.e.f 10.07.1985 and form-in-charge (E&T) in Tech. & Sup.Gr.A w.e.f. 10.07.1988 with the arrears of his wages is legal and justified? If so, to what relief is the concerned workman entitled?”

2. After receipt of the reference, parties are noticed. Though they took steps for certain dates, the management and workman examined one witness each, and documents of workman marked as W-1 to W-13. Ld. Counsel of the workman submits in the meantime that the workman is not interested to contest the case further. It is presumed that the disputes between parties have been resolved in the meantime, Hence No Dispute Award is passed.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 मार्च, 2016

का.आ. 618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 37/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/289/2003-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th March, 2016

S.O. 618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref.

No. 37 of 2004) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.03.2016.

[No.L-20012/289/2003-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 37/2004

Employers in relation to the management of Kusunda Area, M/s. BCCL

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the Workman : Shri K. Prasad, Advocate

State : Jharkhand Industry : Coal

Dated : 11/03/2016

AWARD

By Order No.L-20012/289/2003-IR (C-I), dated 26/04/2004, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Kusunda Area of M/S BCCL in terminating the service of S/Shri Dinesh Kumar Pathak, Anand Rewani, Smt.Chhudu Devi, Remesh Rewani, Smt. Kalayani Devi, Dayal Rewani, Suman Rewani, Sapan Kr. Rewani, Kajal Kr. Tiwary, Chhabhi Devi, Gaurang Rewani, Nilkanth Rewani, Swami Dayal Pathak, Lata Devi, Navin Ch. Upadhyay and Devanand Tiwari w.e.f. 03.11.99 and Sri Sanjay Rewani and Dinesh Rewani w.e.f 05.11.2003 respectively, is fair and justified ? If not, to what relief are the concerned workmen entitled?”

2. The case is received from the Ministry of Labour on 14.05.2004. After receipt of the reference, both parties are noticed. The workman files their written statement on 09.12.2004. Thereafter the management files their written statement-cum-rejoinder on 18.08.2005. One witness each

side adduced respectively. Document filed by both side. The documents of management is marked as M-1 to M-4 series and documents of workman is marked as W-1 & W-2 series.

3. The case of the workmen is that the above named person were given employment after entering into agreement between the management of Kusunda Area and the land owners of Basseria Basti who sponsored the names as mentioned in the schedule of reference were always abide and honoured the agreement but the management did not comply with the terms of the agreement.

4. It is also submitted by the workmen that the management issued appointment letter but after that the management dismissed the above named workmen illegally.

5. The workmen further submitted that nine workmen were appointed to work in the underground and they were working in different units of Kusunda Area and they completed more than 190 days in a year as such they were eligible to be permanent employee. But without giving the workmen permanent status, they dismissed without following the procedure as laid down in certified standing order.

6. It is also submitted by the workmen that the management excavated the land and extracted lacks tones of coal from their land and badly damaged several area of agricultural land. But as per agreement the management had to pay 80% of the total valuation of the houses land as an advance within 60 days from the date of the agreement but the management did not pay the same.

7. As per point no.30 of the agreement the management and the land owner had agreed to refer any type of dispute if arise between them for amicable settlement. The management took the law in their hand and without resorting to agreement under point no.30 dismissed the workmen violating the terms of the agreement. Hence dispute arose.

8. On the other hand the case of the management is that the management of Kusunda Area entered into an agreement with Sri Dinesh Kr. Pathak and 17 others persons individually, who were land owner or land sponsored by the land owners for mining purpose. On the basis of the aforesaid agreement the management offered them provisional employment subject to submission of indemnity-cum-Security Bond and gave assurance that the land in question is exclusively belonging to them having subsisting lawful title and in case any obstruction, hindrance by him or any one in the enjoyment of the land by the management in the manner desired and if it transpire that exclusive ownership and title of any person if found defective in any manner so also of other claimant's will automatically stand withdrawn.

9. As per the said terms and conditions the land losers allowed for project work. But when the management started mining operation, other villagers also claimed for employment and obstructed mining operation for the same land against which the employment was provided to the aforesaid 18 persons. Due to hindrance and obstruction of the villagers the mining operation was stopped, over the said land. It was the responsibilities and liabilities of 18 persons to provide peaceful possession of the aforesaid land, as agreed.

10. It is further submitted by the management that as per the terms and conditions of the agreement and indemnity Bond the management withdrew the provisional employment of 18 persons. It is claimed by the management that the withdrawal of employment is neither termination or dismissal of the workmen and as such it is not an industrial dispute.

11. The management witness Shri T. K. Roy Senior R.I (MW-1) has stated in his evidence that the workmen did not give vacant possession of the land to the management for which, they were terminated. But Sri Dinesh Rewani (WW-1) says in his cross examination which is quoted below:-

Xxxx

The land we want to give to BCCL has not been registered till today. Agreement speaks unless we registered land, our job will go i.e lost. We did not vacate the house on land which is to be transferred to BCCL as we did not get alternative accommodation from the company.

Xxxx

12. On perusal of the MOU marked as Ext. W-2 series. At serial No. 26.

“That the villagers shall handed over the vacant possession of the schedule land to this MOU to the company and the said land shall be free from all encumbrances and hindrances and on handing over possession of the land within this stipulated period six months agreed number of employment will be provided. In case the ownership of the land/houses is disputed at any stage in future and or the peaceful actual vacant possession of the land /houses is and handed over to BCCL Kusunda Area within six months time from the date of appointment, the employment, so offered to the land /houses losers of his nominees as the case may be shall automatically stand terminated/withdrawn without any further reference and to that effect the land / house owner and his dependant shall submit dully sworn affidavit that they will not go any competent court of law to such any remedy against such withdrawal.”

13. If this the position of the case and considering the facts and circumstances of this case, it is felt that the management of Kusunda Area of M/s BCCL in terminating the service of S/Shri Dinesh Kumar Pathak, Anand Rewani, Smt. Chhodu Devi, Remesh Rewani, Smt. Kalayani Devi, Dayal Rewani, Suman Rewani, Sapan Kr. Rewani, Kajal Kr. Tiwary, Chhabhi Devi, Gaurang Rewani, Nilkanth Rewani, Swami Dayal Pathak, Lata Devi, Navin Ch. Upadhayay and Devanand Tiwari w.e.f. 03.11.99 and Sri Sanjay Rewani and Dinesh Rewani w.e.f. 05.11.2003 respectively, is a just decision. Hence the workmen are not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 मार्च, 2016

का.आ. 619.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईथोपियन एयर लाईन्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 109/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-11012/28/2008-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th March, 2016

S.O. 619.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi (Ref. No. 109 of 2011) now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Ethiopian Airlines and their workmen, which was received by the Central Government on 30.03.2016.

[No. L-11012/28/2008-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, DELHI**

ID No. 109/2011

Shri Sebastian Vallado,
Cliff End Co-operative Housing Society Ltd.,
14/02/13, Bhawani Nagar, Marol
Andheri (East),
Mumbai 400059

...Workman

Versus

The Regional Manager,
India & South East Asia,
Ethiopian Airlines,
30-B, World Trade Center,
Ground Floor, Cuffe Parade,
Mumbai 400 005

...Management

AWARD

This case was referred to Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi for adjudication by Government vide letter No. L-11012/28/2008-IR (CM-I) dated 28.07.2008 and the terms of reference are as under:

‘(i) Whether the action of the management of Ethiopian Airlines, Mumbai, in dismissing the services of Mr. Sebastian Vallado, Junior Transportation Agent with effect from 01.03.2006 is justified and legal?

(ii) To what relief is the concerned workman entitled?

2. Statement of claim was filed by the workman herein, Shri Sebastian Vallado, wherein it is averred that he was employed with Ethiopian Airlines (in short the management) in 1987 at Mumbai as temporary staff and vide appointment letter dated 01.04.1991, he was made permanent employee in Mumbai as Junior Transportation Agent, which designation has the same job description of Traffic Assistants in Air India. The appointment did not specify that he would have to work outside Mumbai or that he could be transferred out of Mumbai. No workman in the history of the Airline Company was ever transferred from one city to another, except the workman herein who has been victimized. During his tenure as temporary staff, he was paid his wages in cash and on being made permanent, he was paid by way of cheque. The management, an International Airline Company, is committed to the basic objective of providing safe, reliable and profitable air transport service for passengers and cargo as well as other aviation related service. Delhi office of the management comprised of 8 employees with one other employee named Shri Vinod Sharma, who was also a Junior Transportation Officer. Basic job of Junior Transportation Officer is to assist his superiors in liasoning and handling agents at the airports. The daily working hours of the workman herein was eight hour shifts in Mumbai but on his transfer to Delhi, his work profile changed and was handling cargo sales reports as well as accounting and his regular working extended from 9.30 am to 5.30 p.m. No overtime was paid whenever he worked on day shifts. His work was exceptional and his services were appreciated time and again. He was terminated on 27.02.2006 and the enquiry conducted was sham and bogus with a pre-determined mindset to terminate the workman maliciously as he had refused to sign a panchnama, as a witness, prepared by Narcotics Control Bureau in having alleged seized drugs from a passenger who was to travel in one of the flights. Finally it has been

prayed by the claimant that he may be reinstated in service with full back wages and continuity of service.

3. Written statement was filed by the management taking several preliminary objections inter alia of malafide intention & ulterior motive, concealment of facts, Tribunal not being the appropriate authority for jurisdiction, terms of reference being made in a mechanical manner, non-service of demand notice, principles of natural justice being followed in conduct of enquiry and award of punishment, misjoinder of parties etc. The management has further denied the material averments contained in the statement of claim. A prayer has been made to dismiss the statement of claim with heavy and exemplary cost.

4. The case was transferred to this Tribunal vide order No.Z-22019/6/2007-IRC-II dated 30.03.2010 of the appropriate Government.

5. Against this factual background, my learned predecessor, on the basis of pleadings of the parties, framed the following issues:

- (i) Whether the enquiry conducted by the management was just, fair and proper?
- (ii) Whether punishment awarded to the claimant commensurate to his misconduct?
- (iii) As in terms of reference
- (iv) Relief

6. Issue No.(i) was treated as preliminary issue and the management was called to adduce evidence. An application was moved by the management pleading therein that the claimant be called upon to lead his evidence first, which was rejected by this Tribunal vide order dated 02.09.2011. The learned A/R for the management approached the High Court, who vide order dated 01.08.2013, set aside the impugned order dated 02.09.2011 of this Tribunal and claimant was called upon to lead evidence first.

7. However, despite affording 18 opportunities to the workman herein by this Tribunal, he failed to put in his appearance. Copy of application moved by his authorized representative for withdrawal of vakalatnama was also sent to the claimant herein. However, he failed to put in his appearance. Thus, it is apparent that the claimant herein is not interested in adjudication of the reference on merits.

8. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 3, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 मार्च, 2016

का.आ. 620.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 192/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/440/1996-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th March, 2016

S.O. 620.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 192 of 1997) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.03.2016.

[No. L-20012/440/1996-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 192/1997

Employers in relation to the management of Barora Area, M/s. BCCL

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the Workman : None

State : Jharkhand

Industry : Coal

Dated : 10/03/2016

AWARD

By Order No. L-20012/440/96-IR (C-I), dated 07/10-11-97, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of General Manager, Barora Area No.1 of M/S BCCL in denying to regularise the service of Shri Sayab Seilh, General Mazdoor as U/G Munshi is justified ? If not, to what relief is the concerned workman entitled?”

2. After receipt of the reference, parties are noticed, Though they took steps for certain dates, subsequently did not appears nor take any interest in the case by the workman. It is presumed that the disputes between parties have been resolved in the meantime, Hence No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 मार्च, 2016

का.आ. 621.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.डब्ल्यू.एफ. एस. (इंडिया) प्राईवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 211/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-11012/09/2015-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th March, 2016

S.O. 621.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi (Ref. No. 211 of 2015) now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bird Worldwide Flight Services (India) Pvt. Ltd. and their workmen, which was received by the Central Government on 30.03.2016.

[No. L-11012/09/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, DELHI**

ID No. 211/2015

The General Secretary,
BWFS Karamchari Union (Regd.),
RZ-330/1BKHS1/11, Gali No.3,
Raj Nagar-II, Palam Colony,
New Delhi 110077

...Workman

Versus

- (1) The Chief Executive Officer,
M/s Bird Worldwide Flight
Services (India) Pvt. Ltd.,
E-9, Connaught House,
Connaught Circus,
New Delhi 110001
- (2) The Managing Director,
M/s Bird Worldwide Flight
Services (India) Pvt. Ltd.,
E-9, Connaught House,
Connaught Circus,
New Delhi 110001

...Managements

AWARD

Central Government, vide letter No.L-11012/09/2015-IR(CM-I) dated 18.09.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether termination of 45 workmen (list enclosed) during the pendency of conciliation proceedings can be construed as violation of Section 33 of Industrial Disputes Act, 1947? To what relief the workmen concerned are entitled to?”

2. On receipt of the above reference, notice was sent to the claimant union as well as the management. Despite several opportunities, claimant union failed to file its statement of claim. Thus, it is clear that the claimant union is not interested in adjudication of the reference on merits.

3. Since the claimant union has failed to file statement of claim, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 16, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 मार्च, 2016

का.आ. 622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 07/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/76/2013-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th March, 2016

S.O. 622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 07 of 2014) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.03.2016.

[No. L-20012/76/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Sri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10
(1) (d) (2A) of the I.D. Act, 1947

Reference No. 07/2014

PARTIES : The Vice President,
Janta Mazdoor Sangh,
Vihar Building, PO: Jharia,
Dhanbad

Vs.

The General Manager,
Kustore Area of M/s BCCL
PO: Kustore,
Dhanbad

Order No. L-20012/76/2013-IR (CM-I)
dated 12.02.2014

Appearances:

On behalf of the : None
Workman/Union

On behalf of the : None
Management

State : Jharkhand Industry : Coal

Dhanbad, dated the 3rd February, 2016

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/76/2013-IR (CM-I) dt.12.02.2014.

SCHEDULE

“Whether the action of the Management of Alkusa Colliery under Kustore Area of M/s. BCCL in not regularizing Sri Uttam Kumar Chatterjee as Surface Trammer is fair and justified? To what relief the concerned workman is entitled to?”

None appeared from either side on date nor did even before at all from any side despite posting of dates on

numerous times after its inception and registration of the case on 25.02.2014 and even subsequently with issuance of formal Notices dt. 22.4.2014 and 8.4.2015 to the both litigant parties on the addresses referred in the Order of the Reference itself. The case is almost stalled at the very beginning on the status of filing of the W.S. Prime faces it holds significance that the case failed to unfold even getting the W.S. by the workman. The same is the position with the Management. This definitely points out to sheer reluctance and unwillingness of the workman to put the case for final adjudication but help add up to piling pendency of cases. The above Notices fell flat to fetch initiatives from either sides. Under the circumstances, it does not seem proper to keep the case alive any longer in the interest of natural justice, as after having provided so many opportunities, they do not even bothered to make appearance whatsoever.

So there is no second opinion to hold it on any further rather to close it down immediately just to save sheer wastage of time and energy of the Tribunal. As such the case is closed as non-existence of dispute between the parties and the case is disposed of as No dispute. Accordingly an order of ‘No Dispute Award’ is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 मार्च, 2016

का.आ. 623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 67/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/50/2003-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th March, 2016

S.O. 623.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 67 of 2003) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.03.2016.

[No. L-20012/50/2003-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Sri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10
(1) (d) (2A) of the I.D. Act, 1947

Reference No. 67/2003

PARTIES : Sri Ajay Kumar Das,
Village: Kalapathar,
PO: Chiksiya
Distt: Bokaro

Vs.

The Project Officer,
Amlabad Colliery of M/s BCCL,
PO: Amlabad, Distt: Dhanbad.

Order No. L-20012/50/2003-IR(C-I)
dt.16.07.2003

Appearances:

On behalf of the : None
Workman/Union

On behalf of the : Mr. U.N. Lal, Ld. Advocate
Management

State : Jharkhand Industry : Coal
Dhanbad, dated the 4th February, 2016

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/50/2003-IR(C-I) dt.16.07.2003.

SCHEDULE

“Whether the Management of Amlabad Colliery of M/s. BCCL is justified in dismissing Shri Ajay Kumar Das from service w.e.f. 4.1.97? If not, to what relief is the said workman entitled?”

The workman/petitioner is reported to be not present on date against which the OP/Management side Mr. U.N.Lal, Ld. Advocate appeared not for this time but earlier also. Though the two Notices dt. 09.09.2003 and 29.09.014 were mailed at the workman's address mentioned in the Order of the Reference itself but it went into vain. The case's status still stands stagnating over evidence of the Management on preliminary point since 02.05.2006 and no further move advanced despite providing ample opportunity to the workman /Petitioner. The petitioner/workman miserably failed to make appearance whatsoever presuming the issue either to have been settled or sorted out of the Court. Workman's successive failure in appearance for a long spell of time speaks much of the disinterestedness and utter reluctance on his part. Based on the facts, the Tribunal holds opinion that it could not be mute spectator on the line and in the interest of natural justice as well. As of now, the case appears to have lost

the merits itself. Further dragging it will be proved improper and sheer wastage of time and energy of the Tribunal. As such the case is closed due to reluctance of the workman concerned and passed an Order of 'No Dispute Award'.

R. K. SARAN, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नवोदय विद्यालय समिति, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/292/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-42012/97/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 624 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/292/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Navodaya Vidyalaya Samiti, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No. L-42012/97/99-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/292/99

Shri Alex Mathew,
S/o N.E. Mathai,
Civil Hospital Compound,
Naugaon (BKD),
Chhattarpur

...Workman

Versus

Director,
Navodaya Vidyalaya Samiti,
Regional Office, 160,
Jhone to Dee,
Maharanapratap Nagar,
Bhopal

Principal,
Jawahar Navodaya Vidyalaya,
Naogaon (BKD),
Chhattarpur

...Management

AWARD

Passed on this 3rd day of March, 2016

1. As per letter dated 26-8-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-42012/97/99/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Jawahar Navodaya Vidhyalaya, Naugaon (BKD), Distt. Chhattarpur in terminating the services of Shri Alex Mathew, UDC is legal and justified? If not, to what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/6. Case of workman is that he was initially appointed on the post of store keeper by 2nd party vide order dated 20-5-94. He was posted at Jawahar Navodaya Vidyalaya, Naugaon, Distt. Chhattarpur. His services was extended by order dated 22-8-94. The appointment was on clear vacant post vide order dated 9-9-94, his appointment as UDC was approved. His appointment on post of UDC was extended vide order dated 9-12-94, 9-3-95, 8-6-95, 4-9-95, 5-12-95, 18-3-96 & 18-5-96. That he completed more than 240 days continuous service on post of UDC. His service record was unblemished. 2nd party terminated his service vide order dated 4-7-96 violating provisions of ID Act and standing orders. His service were terminated without assigning reasons, without obtaining prior permission of Government of India. That he was appointed on post of UDC, prior permission of education department of Government of India. As 2nd party is not competent authority to initiate departmental proceeding against him therefore order of his termination is illegal.

3. Ist party workman further submits that he was not served with show cause notice or charge sheet. No DE was conducted against him. He was not paid one months salary in lieu of notice. Termination of his service is violative of principles of natural justice. That he completed more than 240 days continuous service, he is covered as employee under Section 25 B of ID Act. His services are terminated without notice in violation of Section 25-F is illegal. That 2nd party has terminated his service retaining juniors in employment thereby 2nd party has violated section 25-G, N of ID Act. The orders were issued by Ist party time to time extending his services amounts to unfair labour practice. Termination of his service amounts to punishment and act of victimization is illegal. That 2nd party is covered as an Industry under ID Act. The provisions of standing orders are applicable to it. That

2nd party has deliberately given artificial breaks. His request for taking him on duty were not considered. Workman further submits that after termination of his service, he is not gainfully employed. On such grounds, workman prays for his reinstatement with backwages setting aside order of his termination.

4. 2nd party filed Written Statement opposing claim of Ist party workman. 2nd party submits that Ist party is not a permanent employee. There is no provision for direct appointment of UDC in Navodaya Vidyalaya. That no approval was received to the appointment of workman. Termination of service of workman is not violating any rules. There is no provision or notice of terminal benefits. The material contentions of Ist party workman are denied as false. That Navodaya Vidyalaya is Central Government residential Vidyalaya for rural children. 2nd party denies termination of workman is illegal and unfair. The contentions of workman that he is not in gainful employment 2nd party submits that contentions are not applicable appointment of workman being purely stop gap arrangement, Ist party is not entitled to any relief.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the action of the management of Jawahar Navodaya Vidhyalaya, Naugaon (BKD), Distt. Chhattarpur in terminating the services of Shri Alex Mathew, UDC is legal and justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order. |

REASONS

6. Workman has challenged legality of his termination alleging violation of Section 25-F, G, H of ID Act. 2nd party denied above contentions of workman. Workman filed affidavit of his evidence. In his affidavit of evidence, workman says as per order dated 20-5-94, he was appointed as store keeper at Jawahar Navodaya Vidyalaya, Chhattarpur. As per order dated 9-9-94, he was appointed as UDC. He was working regularly from 1994 to 1996 as UDC. He completed more than 240 days during each of the calendar year. His services were terminated, retrenchment compensation was not paid to him. 2nd party violated provisions of ID Act. After termination of his service, he is unemployed. In his cross-examination, workman says he received information about vacancy from Employment Exchange Office. He was orally interviewed. His name was sent through Employment Exchange Office. He was working on the post of UDC. While he was working with 2nd party, his brother was also working in the same school. The witness was recalled and from his evidence, appointment orders and other documents are proved at

Exhibit W-1 to W-12. Workman admitted document Exhibit M-1. In his cross-examination, workman was unable to say how many times appointment letter was issued to him. After completion of 89 days period of appointment, he used to be relieved. He was unable to tell how much wages per day were paid to him. The documents Exhibit W-1 to W-8 are received for a period of 89 days. The appointment of workman was on daily wages payable at Collector rate. The amount is not mentioned. Exhibit W-9, 10 are copies of marksheet. Exhibit W-11, 12 are certificates about his working period. Exhibit M-1 is copy of attendance register.

7. Management filed affidavit of evidence of Shri Sudheer Ranjan Sahu supporting contentions of management that appointment of workman was on part time basis on stop gap arrangement on the post of store keeper. He was not appointed on regular basis, workman was also officiating as UDC for some time. There is no provision for direct appointment of UDC in Navodaya Vidyalaya. The post of UDC is filled by promotion. That Ist party workman is not covered as workman under ID Act. Workman had left Vidyalaya on 6-7-97 without giving any information. Management's witness in his cross-examination says Ist party workman was appointed as store keeper in 1994 as his appointment was by way of stop gap arrangement for 89 days. After completion of period of 89 days, fresh appointment orders were issued to him. The post of store keeper and UDC are different.

8. From evidence discussed above, the parties are not in serious dispute about the workman was appointed for 89 days. He was initially appointed as store keeper and was officiating as UDC. Considering appointment orders Exhibit W-1 to W-8, it is clear that workman completed more than 240 days continuous service during 1994 to 1996. In statement of claim of Ist party, it is pleaded that Navodaya Vidyalaya is covered as industry under ID Act. There is no specific denial to it. Initial engagement of Ist party was as a store keeper and he was officiating as UDC. Though management's witness in his affidavit says Ist party is not covered as workman such pleading is not found in the Written Statement. The legal position is rather settled that school is an industry, teacher is not workman. Ist party was not working as teacher, he was appointed as storekeeper and officiating as UDC therefore Ist party is covered as workman under Section 2(s) of ID Act.

9. Learned counsel for 2nd party Shri Praveen Namdeo in his argument submits that Navodaya Vidyalaya is not covered under ID Act, Navodaya Vidyalaya is not an Industry. Learned counsel during course of argument point to produce some notifications in support of above argument, however the notifications are not produced. The legal position w.r.t. Section 14 of Administrative Tribunal's Act 1985 in AIR Manual 5th Edition Page 134 is "Unless an Educational Society registered under the Societies Registration Act has been notified under Section

14(2), the Administrative Tribunal constituted under Section 4 of the Act does not have jurisdiction to entertain the grievance of an employee of the society and grant relief to him." 2nd party has not produced any evidence that it is notified under Section 14(2) of Administrative Tribunal Act. No document is produced that it is registered under Society Registration Act. In my considered view, in absence of such evidence, it cannot be said that this Tribunal has no jurisdiction. The evidence of workman is clear that his services are terminated without notice, he was not paid retrenchment compensation. Workman completed more than 240 days continuous service therefore termination of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No. 2- In view of my finding in Point No.1 termination of service of Ist party workman is illegal, question arises whether workman is entitled for reinstatement with backwages. The appointment orders Exhibit W-1 to W-8 clearly shows Ist party workman was repeatedly appointed on daily wages at Collector rate for a period of 89 days. Workman had completed 240 days continuous service. Workman was not selected following recruitment process.

11. Learned counsel for Ist party Shri Dubey emphasized that termination of workman is illegal. Workman be reinstated with backwages. In support of his argument, learned counsel relied on bunch of citations.

In case of Shri Rabinarayan Mohapatra versus Shri Rabinarayan Mohapatra versus State of Orissa and others the appellant was appointed as Hindi teacher on recommendation of Managing Committee. He continued to serve the schools for 89 days and 1 day break in between the spells from 12-7-82 to 25-5-86. Their Lordship considering Section 3 of Validation Act directed respondents to treat the appellant as regularly appointed teacher.

The facts of present case are not comparable as no point is raised about provision of Validation Act in the matter. The ratio cannot be applied to case at hand.

In case between Gujarat Agricultural University versus Rathod Labhu Bechar and others, the question for consideration before their Lordship was whether the employees listed in the Schedule be made permanent from the day when he completed 240 days continuous service. The Scheme framed by University was approved by State Government subject to modifications etc. Their Lordship have approved the Scheme.

Any such scheme is not relied by either parties therefore ratio cannot be applied to case at hand.

In case between State of Haryana Piara Singh and others their Lordship dealing with the claim for

regularization/absorption of ad hoc temporary employees of State Governments and work charged employees daily wage workers and casual labour working for several years without regularization. The terms of reference in present case pertains to legality of termination of Ist party workman. The claim for regularization is not included in the order of reference. From careful reading of the judgment, it is clear that the order of Government of Haryana dated 1-1-1980 prescribed conditions for regularization- (1) he must have put in a minimum service to two years on 31-12-79, (2) he must have been recruited through the Employment Exchange, (3) the service and conduct of such employee should be of an overall good category, (4) he must have possessed the prescribed qualifications for the post at the time of his appointment on ad hoc basis.

The facts are not comparable as such conditions are not laid by any authorities. Ratio cannot be beneficially applied to case at hand.

In case of Hari Nandan Prasad and another versus FCI denial of regularization as per circular dated 6-5-87 was involved. Any such circular is not relied by other party. Therefore principles laid down by their Lordship cannot be applied to present case.

In case between Kondamudi Chandrashekhara Rao versus State Bank of India, Zonal Office, their Lordship observed when context to ratio held in case of State of Karnataka versus Umadevi that the jurisdiction of the constitutional court cannot be exercised to compel the state or to enable the State to perpetuate illegality.

12. When workman was engaged on daily wages without following recruitment process, relief of reinstatement would not be justified. Considering workman was continuously working from 1994 to 1996, compensation Rs. 50,000/- would be reasonable. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management of Jawahar Navodaya Vidhyalaya, Naugaon (BKD), Distt. Chhattarpur in terminating the services of Shri Alex Mathew, UDC is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs.50,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कैंटोनमेंट एग्जीक्यूटिव अफसर, कैंटोनमेंट बोर्ड, म्हो के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/63/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-13025/5/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/63/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Cantonment Executive Officer, Cantonment Board, Mhow and their workman, which was received by the Central Government on 31-03-2016.

[No. L-13025/5/2005-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/63/2006

General Secretary,
Suraksha Asainik Karmchari Sangh,
Garden No.19, Peat Road,
Mhow

...Workman/Union

Versus

Cantonment Executive Officer,
Cantonment Board,
Mhow

...Management

AWARD

Passed on this 2nd day of March, 2016

1. As per letter dated 21-9-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-13025/5/2005-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow in terminating the services of Shri Firoz Khan

w.e.f. 4-9-2000 is legal and justified? If not, to what relief the workman is entitled to?"

(ii) If not, what relief the workman is entitled to?"

No dispute award is passed.

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/2 to 4/6. Case of Ist party workman is that he was appointed as skilled labour on the job of blacksmith Welder on 21-8-96 in workshop of the cantonment Board Mhow. He was not given appointment letter. He was paid out of monthly muster rolls. Certificate was given to him by Vice President and Corporator of Cantonment Board. He was continuously working in workshop of cantonment board w.e.f. 21-8-96 to 4-9-2000 for period of 4 years as per statement submitted before RLC, Bhopal. He was shown continuously working during above said period. His services were orally terminated as 2nd party wanted to fix up another person of their choice by favour. On his repeated request, he was given false assurances and reconsideration. Workman reiterates that his services are terminated malafidely without reasons. He worked for a 560 days within a period of 4 years. He was denied regularisation. His services were terminated without giving opportunity for his defence. Termination of his service is without notice. He claims reinstatement with backwages.

3. 2nd party filed Written Statement on 3-7-08 opposing claim of workman. As per 2nd party management, workman was engaged purely on daily wage basis as per need basis. Workman was not given appointment letter. Certificate issued by Vice President or corporator of Cantonment Board cannot be considered as appointment letter. It is denied that workman was continuously working from 21-8-96 to 4-9-2000. It is reiterated that workman was engaged on daily wages on need basis. When there was no work, he was not engaged. Workman has not mentioned details of other person favoured by the Cantonment Board for appointment in his place. 2nd party denies that workman was continuously working for 4 years. Rather it is pleaded that workman was engaged on daily wages. On such ground, 2nd party submits that workman is not entitled to any relief.

4. Ist party workman submitted rejoinder on 24-9-08 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---|
| (i) Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow in terminating the services of Shri Firoz Khan w.e.f. 4-9-2000 is legal and justified? | Both parties not adduced evidence, the dispute under reference could not be decided on merit. |
|---|---|

REASONS

6. The term of reference pertains to legality of termination of service of workman in violation of Section 25-F of ID Act. Ist party workman failed to adduce evidence in support of his claim. His evidence is closed on 7-10-2014. Management also failed to participate in reference. Evidence of management is closed on 7-4-2015.

7. As both parties failed to participate in reference and adduced evidence, the dispute under reference could not be decided on merit. Accordingly I record my finding in Point No.1.

8. In the result, No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रे आयरन फाऊण्ड्री, जबलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/72/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-16012/01/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/72/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Grey Iron Foundry, Jabalpur and their workman, which was received by the Central Government on 31-03-2016.

[No. L-16012/01/2001-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/72/2002

Shri Sajjanlal Ghawri,
114, Laxmi Nagar,
Bhosle Colony, Dewas (MP)

...Workman

Versus

General Manager,
Bank Note Press,
Dewas (MP)

...Management

AWARD

Passed on this 2nd day of March 2016

1. As per letter dated 9-5-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-16012/1/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the management of General Manager, Bank Note Press, Dewas in compulsorily retiring Shri Sajjanlal Ghawri w.e.f. 31-8-2000 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/2. Case of Ist party workman is that he belongs to sweeper caste. His date of birth is 25-10-46. The date of his superannuation is 24-10-06. On 8-5-76, he was appointed as labour he submitted declaration on his appointment that he was married, he was promoted to the post of counter and thereafter as examiner. He was compulsorily retired on 31-8-2000. At time of his compulsory retirement, he was drawing salary Rs.3870 inclusive of allowances. Chargesheet was issued to him alleging that his first marriage with Beenabai subsisted, he married second time and concealed this fact in his declaration submitted by him at the time of entry in service constituting violation of Rule 21 of CCS(Conduct) Rules. He denied charges alleged against him. Workman contented that he obtained divorce from his first wife Beenabai in Panchayat of Chavni Valmik, Indore on 21-12-1970. The divorce was obtained as per custom observed since long time in his community. His first wife Beena Bai filed civil suit 752 A/69 before Civil Judge, Class II, Indore. Said suit was withdrawn on 23-12-1970 as withdrawal because of compromise before Panchayat. Workman had a son from his first wife, he was residing with him that workman married with his 2nd wife. That enquiry was conducted against him as per Rule 14 of CCS (CCA) Rules 1965. Enquiry Officer submitted his report. The punishment of compulsory retirement was imposed against workman. That Enquiry Officer could not decide if the custom of divorce was not prevailing in his community. Said issue could have been decided by Civil Court. The finding given by Enquiry Officer is illegal. The charges alleged against him are not proved. That he replied to 2nd show cause notice denying findings in the DE. Workman reiterates that punishment of compulsory retirement and deduction of 10 % pension is violation of fundamental

rights. On such ground, workman is praying for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 7/2 to 7/7 opposing claim of workman. 2nd party submits that workman was appointed as mazdoor on 8-5-76. He was promoted to the post of counter and thereafter as examiner from 9-9-87. Chargesheet was issued to workman on 15-7-89. The charges against workman were before joining Government Service, he married with Beenabai, out of which the son was born. After some time, he married with one Sashibai before illegally divorcing Ist wife. That as per Hindu Marriage Act, 2nd marriage is permissible only after divorce from a Court. That in Attestation form, the name of his first wife is not included and only the name of Smt. Shashi Bai was included in spite of warning on the Attestation form. Even in the marriage declaration form dated 6-5-76, he mentioned that he is married and is having one living wife. He suppressed the material facts. Thus he violated Rule 21 of CCS(CCA) Rules and clause 5 of the schedule of Recruitment rules. 2nd party has further submitted that enquiry was conducted regarding chargesheet issued to workman. Enquiry Officer recorded his findings that charges against workman are proved. Disciplinary Authority after carefully going through the Inquiry report, facts and circumstances imposed a major penalty of compulsory retirement. The appeal preferred by workman was rejected on 30-5-01. 2nd party reiterates that the charges against workman are proved. He had not disclosed information about his first wife Beena in the declaration form. The misconduct alleged against workman is proved. Punishment of compulsory retirement against workman is proper and legal. That CCS Rule 21 Clause V provides— No person who has entered into or contracted a marriage with any person who has entered into or contracted a marriage with any person having a spouse living or who having a spouse living has entered into or contracted a marriage with any person shall be eligible for appointment to any of the said posts. That workman has performed his 2nd marriage without divorcing his first wife, he was not eligible for appointment in 1976 itself. That workman divorced Beenadevi in 1970 and submitted false and baseless complaints to harass him and he had not hidden anything from department. 2nd party reiterates that punishment of compulsory retirement is proper and legal.

4. Ist party workman submitted rejoinder at Page 8/1 to 8/4 reiterating his contentions in statement of claim.

5. As per order dated 18-9-15, enquiry against workman is found legal.

6. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings

are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the action of the management of General Manager, Bank Note Press, Dewas in compulsorily retiring Shri Sajjanlal Ghawri w.e.f. 31-8-2000 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. As per order dated 18-9-15, enquiry conducted against workman is found illegal. As there was no pleading in Written statement to prove misconduct alleged against workman, case was fixed for argument. Management has not participated after finding on preliminary issue. There is absolutely no evidence to prove charges alleged against workman. Incidentally I may also refer to the documents produced by management. Exhibit M-1 is the memorandum of charges. Exhibit M-2 is declaration submitted by workman. M-3 is declaration w.r.t. marriage. Workman had declared that he was married and his one wife was living Exhibit M-4 is reply to chargesheet submitted by workman. Exhibit M-5, M-6 are notices of enquiry. Exhibit M-7 is Enquiry Report, M-8 is the appeal submitted by workman. Enquiry is found illegal mainly on the ground that the statement of witnesses recorded before Enquiry Officer are not produced. After enquiry is found illegal, management has not taken any steps requesting permission to prove misconduct alleged against workman. For want of evidence, it is surprised to say that the charges alleged against workman are not proved. Exhibit W-1 produced by workman shows that civil suit 752/69 filed by Beenabai was dismissed as controversy between them was settled between them out of Court. The suit was withdrawn.

8. Learned counsel for Ist party submitted written notes of argument. 2nd party did not advanced any argument. For reasons discussed above, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 charges alleged against workman are not proved. Management has not taken any steps to adduce evidence after finding in Point No.1. As charges are not proved, punishment of compulsory retirement of workman cannot be sustained. Punishment imposed against workman deserves to be quashed and set aside. As workman has already attained age of superannuation, workman deserves to be allowed salary from the period of compulsory retirement till the date of superannuation. The punishment for deduction of gratuity also deserves to be quashed. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) Punishment of compulsory retirement and deduction of gratuity by order dated 27-5-01 is set-aside.
- (2) 2nd party is directed to pay salary/wages to workman from date of compulsory retirement i.e. 31-8-2000 till the date of his superannuation within 30 days from publication of award.
- (3) Ist party workman also be allowed retiral benefits as per rules.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रे आयरन फाऊण्डी, जबलपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/112/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-14012/12/94-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 627 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/112/95) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Grey Iron Foundry, Jabalpur and their workman, which was received by the Central Government on 31-03-2016.

[No. L-14012/12/94-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/112/95

Shri Inder Singh Yadav,
Indra Basti,
Behind Marbel Company,
Goara Talab,
Post Prem Nagar, Madan Mahal,
Jabalpur

...Workman

Versus

General Manager,
Grey Iron Foundry,
Jabalpur

...Management

AWARD

Passed on this 11th day of March 2016

1. As per letter dated 9-6-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-14012/12/94-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Grey Iron Foundry, Jabalpur (MP) in terminating the services of Shri Inder Singh Yadav, Ex.Electrician vide order dated 21-2-92 is proper and legal? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 7/1 to 7/2. Case of Ist party workman is that he was employed with management of 2nd party. His service record was satisfactory. Chargesheet was issued to him alleging that he committed theft. On the basis of chargesheet, enquiry was held against him. On report of Enquiry Officer, workman was dismissed from service. That enquiry conducted against him is contrary to principles of natural justice. Enquiry Officer acted as prosecutor than judge. Enquiry was not properly conducted. The findings of Enquiry Officer are perverse. On such ground, workman prays for his reinstatement.

3. 2nd party filed Written Statement at Page 8/1 to 8/11 opposing claim of workman. 2nd party submits that chargesheet was issued to workman pertaining to attempt of theft of Government property. The incident was of 19-2-88 at 7 AM. Workman while going out of factory on completion of night duty on bicycle with a rexine bag hang on the handle of the cycle. On his search at main gate by Darban Shri Kamraj, workman was caught with the bag. Workman snatched bag and started running away. With the help of other Security Guard, workman was caught on his search in presence of orderly Shri N.K.Dey. articles were found in tiffin carrier were one small foam leather zip fitted bag, one yellow printed lungi, one sun goggles brown colour, 3 sets of finger contacts, 8 pieces of loose copper contacts were seized in presence of witnesses. Chargesheet was issued to workman. Statement of witnesses were recorded by orderly Shri N.K. Dey. The articles were seized on the same day in presence of witness L.L.Vishwakarma, I.P.Dhanuk, R.C.Puraiya. The chargesheet was issued to workman, reply was submitted to chargesheet. Reply submitted by workman was found unsatisfactory. Shri S.K.Pandey was appointed as Enquiry Officer. Subsequently Shri Aglave was appointed as Enquiry Officer. After his transfer, Shri K.B.Bannerjee was

appointed as Enquiry Officer. Shri B.L.Prasad was appointed as Presenting Officer. After issuing memos, enquiry was conducted on various dates. 11 witnesses were examined before the Enquiry Officer. Workman submitted his defence statement. 4 defence witnesses were examined. Enquiry Officer submitted finding that charges alleged against workman were proved. Considering findings of Enquiry Officer after issuing showcause notice, punishment of dismissal was imposed against workman on 21-2-92.

4. 2nd party further submits that service record of workman was not satisfactory. He was issued several warnings for past misconducts., 2nd party prays that reference be answered in its favour.

5. As per order dated 27-8-2015, enquiry conducted against workman is found proper and legal.

6. Considering pleadings on record and findings on Enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Affirmative |
| (iii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

7. Whether the misconduct alleged against workman are proved needs to be decided from evidence in Enquiry Proceedings. The record of Enquiry Proceedings is produced at Exhibit M-1. Learned counsel for Ist party workman did not advance any argument w.r.t. evidence of management's witnesses in Enquiry Proceedings. As pointed out by Shri A.K.Shashi for management, the evidence of management's witnesses is recorded. The witnesses of the management were cross-examined. Workman examined 4 witnesses in support of his defence. All the statements are at Page 9/26, 9/41 to 9/43, 9/47, 9/51, 9/54, 9/58, 9/62 and 9/69. The material seized from workman was not disputed.

8. Learned counsel for Ist party workman during course of argument emphasized that the charge of committing theft or attempt to commit theft cannot be proved from evidence in Enquiry Proceedings as no evidence is adduced that articles alleged to have been recovered from workman were Government property. Any register was not produced before Enquiry Officer. The theft of Government property was not proved from management's witnesses. The incident was not reported to police. Workman was

not prosecuted on report of management. It is emphasized that for absence of evidence about identity of article as Government property, the charge of theft or attempt of theft cannot be proved. The chargesheet issued to workman at Page 9/28 pertain to on search of workman by Darban Kamraj, Government property were found in his possession without authority. The recovery of the articles from workman after his search is established from evidence of the management's witnesses.

9. Learned counsel for Ist party workman Shri R.C.Shrivastava did not advance any argument about the evidence of management's witnesses. The detailed discussion of evidence of management's witnesses is not required.

10. Management's witness Shri M.L.Vishwakarma in his statement narrates the incident that workman was caught, a tiffin of stainless steel was found. The articles of electrical were recovered from the tiffin of Ist party workman. Similar evidence is given by other witnesses of management that the articles were seized preparing seizure memo. As no argument have been advanced about the evidence of management's witness by Shri R.C.Shrivastava, detailed discussion about quality of the evidence of management's witnesses is not necessary.

11. No evidence is adduced that these were government property, the workman did not claim during Enquiry Proceedings that the articles belongs to him. The workman was apprehended while leaving factory premises after night duty. The incident occurred within the factory premises. Workman has not explained how the electrical articles recovered from him were found in his possession. The charge is not exactly of committing theft or attempt to commit theft but the charge is the articles of government property were found in his possession constituting misconduct an act unbecoming on part of Government servant. The evidence is sufficient to prove charges alleged against workman. The evidence of management's witnesses in Enquiry Proceedings does not require re-appreciation as scope of judicial review is limited. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

12. Point No. 2- Punishment of dismissal is imposed against workman. The charge alleged against workman that he was found carrying government property is proved from evidence in Enquiry Proceedings. The charge proved against workman is of serious nature. The punishment of dismissal cannot be said excessive or disproportionate to the proved misconduct. Therefore I record my finding in Point No. 2 in Affirmative.

13. In the result, award is passed as under:-

- (1) The action of the management of Grey Iron Foundry, Jabalpur (MP) in terminating the services of

Shri Inder Singh Yadav, Ex.Electrician vide order dated 21-2-92 is proper and legal.

- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/110/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/72/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 628 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/110/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No.L-40012/72/2001-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/110/2001

Shri Kamal Singh,
S/o Gopal Singh,
Vill & PO Mawan,
Tehsil & Distt. Guna
Guna(MP)

...Workman

Versus

Chief General Manager,
Deptt. Of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

...Management

AWARD

Passed on this 9th day of March, 2016

1. As per letter dated 30-5-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section -10 of I.D. Act, 1947 as per Notification No.L-40012/72/2001/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Kamal Singh, S/o Shri Gopal Singh w.e.f. 1-4-2000 is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/6. Case of Ist party workman is that he was initially appointed in 4-4-89 for performing duties of phone mechanic on daily wage basis. His appointment was continued uninterruptedly till 31-3-2000. He was orally terminated without issuing notice. Salary in lieu of notice, retrenchment compensation was also not paid to him. His services were terminated without assigning reasons. He completed about 12 years continuous service. He completed more than 240 days service during each of the year.

3. 2nd party had not displayed list of all workmen of the categories working like him on notice board seven days before termination of his services. 2nd party violated Rule 77 of ID Central Rules 1957. Policy of last come first go was not followed while terminating his services. Number of daily wage employees were retained appointed subsequent to his termination. Workman was not re-engaged. That as per judgment in case, daily rated casual labours versus Union of India reported in AIR-1987-SC2342, the workman was not absorbed/ regularized in service. The 2nd party engaged other daily wage workman violating Section 25 H of ID Act. Ist party alleges termination of his service from 1-3-97 is in violation of Section 25-F, G, H of ID Act. His termination of service is also alleged to be unfair labour practice. By amendment, Ist party workman submits that after termination of his service, he has no source of livelihood, he is not in gainful employment. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of the Ist party. That workman was not appointed on daily wages. He is not covered as workman. It is reiterated that the workman was not appointed in 1987. The post of DET was not created at Guna. The vacancies were not published. Workman was not posted at Guna as labour in 1987. The engagement of daily wage workers was prohibited since 1985.

5. 2nd party further submits that for petty work or time bound work, the management engaged few labours on piece rate basis. On completion of such petty work, labours engaged were automatically retrenched. Workman had not completed 240 days continuous service. The labours engaged on daily wages were paid by local officers. The rate of petty work, time bound work was fixed time to time before engaging workman. Ist party workman had not

completed 240 days continuous service. He was not retained by 2nd party. Provisions of ID Act pertain to issuing notice of retrenchment or payment of retrenchment compensation are not applicable. The engagement of daily wage labours was prohibited since 1985. There was no question of preparing list as per Rule 77 of ID Central Rules 1958. That for execution of petty work, no record was maintained. Workman was neither appointed nor terminated by 2nd party. Violation of Section 25-F, G, H of ID Act is denied. 2nd party prays that reference be answered in its favour.

6. Ist party workman filed rejoinder reiterating his contentions in statement of claim. 2nd party denied that workman completed 240 days continuous service.

7. Additional Written Statement is filed by 2nd party after amendment in statement of claim. 2nd party contends that the workman engaged for specific work were given understanding that after completion of work, their services would come to end automatically.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--------------------|
| (i) Whether the action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Kamal Singh, S/o Shri Gopal Singh w.e.f. 1-4-2000 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order |

REASONS

9. Ist party workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act, Rule 77 of ID Central Rules 1957. The application for production of documents was filed by Ist party on 19-9-07. The application was opposed by management. As per order dated 14-7-09, 2nd party was directed to produce documents relating to payments made to daily wage labours. The documents are not produced.

10. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged on daily wages from 4-4-89 to 31-3-2000 for a period of 12 years. He completed more than 240 days service during each of the relevant year. He submitted application for regularization in 1998. He was not given benefit of circular dated 10-9-93. Temporary status was not allowed to him. His services were orally terminated on 1-4-2000 without issuing notice. Retrenchment compensation was not paid to him. In his cross-examination, he passed 8th standard. Appointment letter was not received by him. He not received letter from Employment Exchange. In Para 4 of his affidavit, he has stated that circular was issued by

Post and Telecom deptt. He denied that he did not worked with the 2nd party. That he produced documents muster roll. He denies that muster roll produced by him is forged document.

11. Ist party filed affidavit of witness Kaluram about working in telecom department from 4-4-89 for a period of 12 years. Wages were paid in first week of the month obtaining signatures on the receipt. Workman completed 240 days continuous service during each of the year. His services orally terminated without notice. Retrenchment compensation was not paid. In his cross-examination, he denies that as dispute raised by him is pending and workman given evidence in his matter, therefore he was giving evidence to support claim of workman. He denies that he was not working with workman. They were working separately for 1-2 years. He denies they were working under contractor. Witness was unable to tell how many days workman was working in a month but he added that workman was continuously working. The suggestion is denied that workman not completed 240 days service.

12. Management filed affidavit of witness Shri Gajendra Singh Senger. In his affidavit of evidence, management's witness says workman did not work in Telephone Exchange, he not completed 240 days working. Workman was not appointed by 2nd party. The cross-examination of management's witness was recorded in R/156/01, its certified copy is produced on record. Management's witness in his cross-examination says he was posted at GTO/SDO at Gwalior during 1986 to 1999. That any document regarding working of the Ist party were not available with the department. Presently daily wage employee were not working. Work pertaining to cable line fault, digging ditches was carried by calling tender after issuing publication. The process of calling tender requires one month time. The tender used to be for a period of one year. The work of cable fault and digging ditches is carried as petty work engaging labours for short period. The labours engaged for petty work are paid from Advance fund of the department. The wages for short period of works are paid every day for the wages w.r.t. long period of work are paid by Accounts Office preparing bill and verifying it. 2nd party has not produced any of the bills or any record of payment of management's witness is not supported by documents. The evidence of Ist party and his witness is not shattered about workman was working with 2nd party on daily wages from 4-4-89 to 31-3-2000. If evidence of both parties is carefully scrutinized, it is clear that evidence of workman is corroborated by witness whereas evidence of management's witness Gajendra Singh is not corroborated by any documents.

13. During course of argument, learned counsel for 2nd party Shri R.S.Khare submits that the witness of Ist party is interested witness. He is trying to support claim of workman cannot be believed. The evidence of Ist party

witness is that he was working along with workman as such he is co-employee and I find no reason to disbelieve his unshattered evidence. The argument advanced by Shri R.S.Khare that witness of workman in his cross-examination says that workman worked for 26 days only, the evidence is not sufficient to establish 240 days continuous service cannot be accepted. Witness of Ist party Shri Kamal Singh in his cross-examination says workman was working for 26 days during each of the month.

14. Learned counsel for 2nd party Shri R.S.Khare reliefs on ratio held in

Case of Batala Coop Sugar Mills versus Sowaran Singh reported in 2005(8) SCC-481. Their Lordship dealing with Section 25-F, H of ID Act held that burden of proof lies on workman to prove 240 days continuous service.

The evidence of workman and his witness is not shattered on the point workman was continuously working from September 1987 to 28-2-97. The evidence on record shows that workman completed 240 days continuous service preceding 12 months of his termination. His services are terminated without notice without displaying list of the labours on notice board. The termination of service of Ist party workman is in violation of Section 25-F, G and Rule 77 of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

15. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains whether workman is entitled for reinstatement with backwages. Learned counsel for Ist party Shri N.K.Salunke relies on ratio held in case between

Ashok Kumar Sharma versus Oberoi Flight Services reported in 2010(1)SCC-142. In above said case, workman was working as loader, he was found carrying 30KLM (a foreign airline) soup spoons illegally in his shoe. Workman admitted guilt in writing and so he was dismissed from service. The order of his compensation Rs.60,000 was set-aside. The compensation was enhanced to Rs. 2 Lakhs.

The facts of present case are not comparable. Ratio cannot be applied to case at hand as in above case, workman had admitted charges in writing.

In case of Deepali Gunhdu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. Their Lordship held that denial of full backwages on reinstatement awarded by Tribunal. Their Lordship held that reinstatement entitles such employee to claim full backwages. Denial of backwages would amount to indirectly punishing the employee and rewarding employer by relieving him of the obligation to pay backwages.

The facts of above case are not comparable as in above cited case the appellant was appointed as teacher in primary school run by a trust. The appellant teacher had refused to contribute Rs.1500 per month towards the tax liability. Towards recovery of tax of Rs. 79,974/-. Thereafter 25 memos were issued to appellant and the appellant was suspended. The ratio cannot be applied to case at hand.

The copies of award in R/26/01, 25/01 are also submitted by Ist party workman. The evidence adduced in the case is not comparable. Each case requires to be decided on the evidence adduced by the parties.

16. Shri R.S. Khare, learned counsel for 2nd party relies on ratio held in

Case of Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(5)SCC-136. Their Lordship considering service of daily wager who worked for short period of 240 days only terminated by appellant employer in 1991 in contravention of Sec. 25-F of ID Act. The award of reinstatement with continuity of service with 25 % backwages was set aside and compensation Rs. 50,000 was allowed.

In present case, the evidence on record shows workman was working from 4-4-89 to 31-3-00 and not only for 240 days therefore the ratio held in the case cannot be applied to case at hand.

In case of MP State Agro Industries Development and another versus Shri S.C. Pandey reported in 2006(2)SCC-716. Their Lordship dealing with status of daily wager held daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and rules framed there under and therefore he does not derive any legal right. It is held that only because a temporary employee completes said period of service that by itself would not confer any legal right upon him to be regularized in service. Their Lordship allowed compensation Rs.10,000/-.

In case between Secretary, State of Karnataka and others versus Umadevi and others reported in 2006(4)SCC-1. Their Lordship dealing with public employment- Absorption, regularization or permanent continuance of temporary contractual, casual daily wage or adhoc employees appointed/ recruited and continued for long in public employment de hors the constitutional scheme of public employment. It is erroneous for supreme court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for competing for employment. Further courts must be careful in ensuring that they do not interfere unduly with the

economical/ financial arrangement of the affairs of the State or its instrumentalities.

As evidence of workman shows that he was working from 4-4-89 to 31-3-00 and termination of his service is without notice, retrenchment compensation was not paid to him. The pleadings and evidence of workman does not show what rate of wages were paid to him.

17. The evidence of workman shows he was not appointed following recruitment procedure. He was engaged on daily wages. Reinstatement of workman is not justified. Considering the period of work, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

18. In the result, award is passed as under:-

- (1) The action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Kamal Singh, S/o Shri Gopal Singh w.e.f. 1-4-2000 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/109/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/73/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/109/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No.L-40012/73/2001-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/109/2001**

Shri Kaluram, S/o Shri Lalaram,
Ward No. 24, Shri Ram Colony,
Guna (MP)

...Workman

Versus

Chief General Manager,
Deptt. Of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

...Management

AWARD

Passed on this 9th day of March, 2016

1. As per letter dated 30-5-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-40012/73/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Kaluram S/o Shri Lalaram w.e.f. 1-4-2000 is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 2/5. Case of Ist party workman is that he was initially appointed in 1-3-1988 for performing duties of phone mechanic on daily wage basis. His appointment was continued uninterruptedly till 31-3-2000. He was orally terminated without issuing notice. Salary in lieu of notice, retrenchment compensation was also not paid to him. His services were terminated without assigning reasons. He completed 9 years 6 months continuous service. He completed more than 240 days service during each of the year.

3. 2nd party had not displayed list of all workmen of the categories working like him on notice board seven days before termination of his services. 2nd party violated Rule 77 of ID Central Rules 1957. Policy of last come first go was not followed while terminating his services. Number of daily wage employees were retained appointed subsequent to his termination. Workman was not re-engaged. That as per judgment in case, daily rated casual labours versus Union of India reported in AIR-1987-SC2-342, the workman was not absorbed/regularized in service. The 2nd party engaged other daily wage workman violating Section 25 H of ID Act. Ist party alleges termination of his service from 31-3-2000 is in violation of

Section 25-F, G, H of ID Act. His termination of service is also alleged to be unfair labour practice. By amendment, Ist party workman submits that after termination of his service, he has no source of livelihood, he is not in gainful employment. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of the Ist party. That workman was not appointed on daily wages. He is not covered as workman. It is reiterated that the workman was not appointed in 1988. The post of DET was not created at Guna. The vacancies were not published. Workman was not posted at Guna as labour in 1988. The engagement of daily wage workers was prohibited since 1985.

5. 2nd party further submits that for petty work or time bound work, the management engaged few labours on piece rate basis. On completion of such petty work, labours engaged were automatically retrenched. Workman had not completed 240 days continuous service. The labours engaged on daily wages were paid by local officers. The rate of petty work, time bound work was fixed time to time before engaging workman. Ist party workman had not completed 240 days continuous service. He was not retained by 2nd party. Provisions of ID Act pertain to issuing notice of retrenchment or payment of retrenchment compensation are not applicable. The engagement of daily wage labours was prohibited since 1985. There was no question of preparing list as per Rule 77 of ID Central Rules 1958. That for execution of petty work, no record was maintained. Workman was neither appointed nor terminated by 2nd party. Violation of Section 25 F, G, H of ID Act is denied. 2nd party prays that reference be answered in its favour.

6. Ist party workman filed rejoinder reiterating his contentions in statement of claim. 2nd party denied that workman completed 240 days continuous service.

7. Additional Written Statement is filed by 2nd party after amendment in statement of claim. 2nd party contends that the workman engaged for specific work were given understanding that after completion of work, their services would come to end automatically.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--------------------|
| (i) Whether the action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Kaluram S/o Shri Lalaram w.e.f. 1-4-2000 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order |

REASONS

9. Ist party workman is challenging termination of his service for violation of Section 25 F, G, H of ID Act, Rule 77 of ID Central Rules 1957. The application for production of documents was filed by Ist party on 8-10-08. The application was opposed by management. As per order dated 14-7-09, management was directed to produce the documents about payment made to daily wages. The documents are not produced by 2nd party.

10. Workman filed affidavit of his evidence supporting contentions in statement of claim that he was engaged on daily wages from 1-3-88. He worked for 13 years. He completed 240 days continuous service. He was terminated on 1-4-04 without notice, he was given benefit of circular dated 10-9-92. He worked more than 240 days during each of the year. In his cross-examination, workman says appointment letter was not received by him, he did not received letter from Employment Exchange. It is reiterated that he was working in Telecom office. He denies that he was working in post and telegraph office. He denied working under contractor.

11. Affidavit of witness Shri Kamal Singh supported that he was working with workman from 1-3-1988 in Telecom Office, Guna. He completed more than 240 days during each of the calendar year. His services were orally terminated on 1-4-00. In his cross-examination, the reference pertains to his termination is pending. Workman would be as witness in his case. He was working with Ist party workman sometimes they were working separately. They were working separately together for six months. Thereafter they were working together. He was working with workman Shri Kaluram since 1987. He denies that he is giving evidence as instructed by workman. He was unable to tell for how many days Shri Kaluram worked with him in 1988. The evidence of witness that he was working alongwith workman Kaluram is not shattered. He denies that Kaluram not completed 240 days working.

12. Management filed affidavit of witness Shri Gajendra Singh Senger. In his affidavit of evidence, management's witness says workman did not work in Telephone Exchange, he not completed 240 days working. Workman was not appointed by 2nd party. The cross-examination of management's witness was recorded in R/156/01, its certified copy is produced on record. Management's witness in his cross-examination says he was posted at GTO/SDO at Gwalior during 1986 to 1999. That any document regarding working of the Ist party were not available with the department. Presently daily wage employee were not working. Work pertaining to cable line fault, digging ditches was carried by calling tender after issuing publication. The process of calling tender requires one month time. The tender used to be for a period of one year. The work of cable fault and digging ditches is carried as petty work engaging labours for short period. The

labours engaged for petty work are paid from Advance fund of the department. The wages for short period of works are paid every day for the wages w.r.t. long period of work are paid by Accounts Office preparing bill and verifying it. 2nd party has not produced any of the bills or any record of payment of management's witness is not supported by documents. The evidence of Ist party and his witness Kamal Singh is not shattered about workman was working with 2nd party on daily wages from 1-3-88 to 31-3-2000. If evidence of both parties is carefully scrutinized, it is clear that evidence of workman is corroborated by witness Kamal Singh whereas evidence of management's witness Gajendra Singh is not corroborated by any documents.

13. During course of argument, learned counsel for 2nd party Shri R.S. Khare submits that the witness of Ist party is interested witness. He is trying to support claim of workman cannot be believed. The evidence of Ist party witness is 'that he was working alongwith workman as such he is eo-employee and I find no reason to disbelieve his unshattered evidence. The argument advanced by Shri R.S. Khare that evidence is not sufficient to establish 240 days continuous service cannot be accepted.

14. Learned counsel for 2nd party Shri R.S. Khare relies on ratio held in

Case of Batala Coop Sugar Mills versus Sowaran Singh reported in 2005(8) SCC-481. Their Lordship dealing with Section 25-F, H of ID Act held that burden of proof lies on workman to prove 240 days continuous service.

The evidence of workman and his witness is not shattered on the point workman was continuously working from 1-3-88 to 31-3-2000. The evidence on record shows that workman completed 240 days continuous service preceding 12 months of his termination. His services are terminated without notice without displaying list of the labours on notice board. The termination of service of Ist party workman is in violation of Section 25-F, G and Rule 77 of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

15. Point No. 2- In view of my finding in Point No. 1 termination of services of workman is illegal, question remains whether workman is entitled for reinstatement with backwages. Learned counsel for Ist party Shri N.K. Salunke relies on ratio held in case between

Ashok Kumar Sharma versus Oberoi Flight Services reported in 2010(1) SCC-142. In above said case, workman was working as loader, he was found carrying 30KLM (a foreign airline) soup spoons illegally in his shoe. Workman admitted guilt in writing and so he was dismissed from service. The order of his compensation Rs. 60,000 was set-aside. The compensation was enhanced to Rs. 2 Lakhs.

The facts of present case are not comparable. Ratio cannot be applied to case at hand as in above case, workman had admitted charges in writing.

In case of Deepali Gunhdu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10) SCC-324. Their Lordship held that denial of full backwages on reinstatement awarded by Tribunal. Their Lordship held that reinstatement entitles such employee to claim full backwages. Denial of backwages would amount to indirectly punishing the employee and rewarding employer by relieving him of the obligation to pay backwages.

The facts of above case are not comparable as in above cited case the appellant was appointed as teacher in primary school run by a trust. The appellant teacher had refused to contribute Rs. 1500 per month towards the tax liability. Towards recovery of tax of Rs. 79,974/-. Thereafter 25 memos were issued to appellant and the appellant was suspended. The ratio cannot be applied to case at hand.

The copies of award in R/26/01, 25/01 are also submitted by 1st party workman. The evidence adduced in the case is not comparable. Each case requires to be decided on the evidence adduced by the parties.

16. Shri R.S. Khare, learned counsel for 2nd party relies on ratio held in

Case of Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(5) SCC-136. Their Lordship considering service of daily wager who worked for short period of 240 days only terminated by appellant employer in 1991 in contravention of Sec. 25-F of ID Act. The award of reinstatement with continuity of service with 25 % backwages was set aside and compensation Rs. 50,000 was allowed.

In present case, the evidence on record shows workman was working from 1-3-88 to 31-3-2000 and not only for 240 days therefore the ratio held in the case cannot be applied to case at hand.

In case of MP State Agro Industries Development and another versus Shri S.C. Pandey reported in 2006(2) SCC-716. Their Lordship dealing with status of daily wager held daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and rules framed there under and therefore he does not derive any legal right. It is held that only because a temporary employee completes said period of service that by itself would not confer any legal right upon him to be regularized in service. Their Lordship allowed compensation Rs. 10,000/-.

In case between Secretary, State of Karnataka and others versus Umadevi and others reported in 2006 (4) SCC-1. Their Lordship dealing with public employment- Absorption, regularization or permanent continuance of temporary contractual, casual daily wage or ad hoc employees appointed/recruited and continued for long in public employment de hors the constitutional scheme of public employment. It is erroneous for supreme court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for completing for employment. Further courts must be careful in ensuring that they do not interfere unduly with the economic financial arrangement of the affairs of the State or its instrumentalities.

As evidence of workman shows that he was working from 1-3-88 to 31-3-2000 termination of his service is without notice, retrenchment compensation was not paid to him. The pleadings and evidence of workman does not show what rate of wages were paid to him.

17. The evidence of workman shows he was not appointed following recruitment procedure. He was engaged on daily wages. Reinstatement of workman is not justified. Considering the period of work, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

18. In the result, award is passed as under:-

- (1) The action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Kaluram S/o Shri Lalaram w.e.f. 1-4-2000 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/156/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/155/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/156/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No. L-40012/155/2001-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/156/2001

Shri Chhotelal S/o Shri Komalsingh,
R/o Vill Amanchar, PO Patharki
Tehsil Mungawali,
Distt. Guna

...Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

Distt. Engineer (Phones),
Guna

...Management

AWARD

Passed on this 9th day of March, 2016

1. As per letter dated 9-10-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-40012/155/2001/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Chhotelal S/o Shri Komal singh w.e.f. 21-2-98 is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/6. Case of Ist party workman is that he was initially appointed in 8-8-87 for performing duties of phone mechanic on daily wage basis. His appointment was continued uninterruptedly till 21-2-99. He was orally terminated without issuing notice. Salary in lieu of notice, retrenchment compensation was also not paid to him. His services were terminated without assigning reasons. He

completed 9 years continuous service. He completed more than 240 days service during each of the year.

3. 2nd party had not displayed list of all workmen of the categories working like him on notice board seven days before termination of his services. 2nd party violated Rule 77 of ID Central Rules 1957. Policy of last come first go was not followed while terminating his services. Number of daily wage employees were retained appointed subsequent to his termination. Workman was not re-engaged. That as per judgment in case, daily rated casual labours versus Union of India reported in AIR-1987-SC 2342, the workman was not absorbed/regularized in service. The 2nd party engaged other daily wage workman violating Section 25 H of ID Act. Ist party alleges termination of his service from 21-2-99 is in violation of Section 25-F,G,H of ID Act. His termination of service is also alleged to be unfair labour practice. By amendment, Ist party workman submits that after termination of his service, he has no source of livelihood, he is not in gainful employment. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of the Ist party at Page 5/5 to 5/5. 2nd party contends that workman was not appointed on 1-1-1989 as Telephone labour. The post of SDO(T) was not created at Guna. The vacancy was not published. Workman was not posted as Telephone labour. Since 1985, appointment on daily wages were banned. 2nd party submits that for paid work/ time bound work, management engaged few labours on piece rate basis. After completion of time bound work, labours were automatically retrenched. For new work, again local officers engaged labour as per requirement in different stations. D.M. Guna fixed the rate of petty work/ time bound work from time to time before engaging any workman. The labours so engaged were given understanding that on completion of work, they would not be continued. Workman not completed 240 days continuous service. There is no question of payment of retrenchment compensation or issuing notice under ID Act. It is contended that as workman was not appointed, there was no question of displaying list of workers as per Rule 77 of ID Central Rules 1957. It is submitted that principle of last come first go is not applicable as workman was not appointed nor terminated by the management. No record is maintained regarding execution of petty work, time bound work. It is reiterated that workman has not completed 240 days service during any of the year. He not completed 240 days continuous service. 2nd party prays that reference be answered in its favour.

5. Ist party workman filed rejoinder reiterating his contentions in statement of claim. 2nd party denied that workman completed 240 days continuous service.

6. Additional Written Statement is filed by 2nd party after amendment in statement of claim. 2nd party contends

that the workman engaged for specific work were given understanding that after completion of work, their services would come to end automatically.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Chhotelal S/o Shri Komal Singh w.e.f. 21-2-98 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

8. Ist party workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act, Rule 77 of ID Central Rules 1957. The application for production of documents was filed by Ist party on 16-6-05. The application was opposed by management. As per order dated 8-4-08, workman was given liberty to prove the documents required.

9. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged on daily wages from 8-8-87. He worked continuously for 10 years 6 months. He completed more than 240 days continuous service during each of the year. He was not granted temporary status. He was not given benefit of circular dated 10-9-93. His services were orally terminated on 21-2-98. In his cross-examination, workman says appointment letter was not issued to him. He had not received letter from Employment Exchange. He was working at Guna, Raghavgarh, Kherai, he was appointed in 1987 by SDO. Appointment letter in writing was not given to him. He was discontinued in 1993. He denies that he had not completed 240 days continuous service.

10. Ist party filed affidavit of witness Hargovind supporting evidence of workman that he was engaged on daily wages in 1987. He was working till Feb 1998 for period of 10 ½ years they were working at different places. The payment were made obtaining signatures on receipt duly stamped. Workman completed 240 days continuous service.

11. In his cross-examination, witness of Ist party says the dispute raised by him is pending. He denies that he had given evidence in other cases. He was unable to tell in how many cases, he had given evidence. He denies workman had not worked for more than 240 days. In his further cross-examination, witness says that he was working in the department since 1957-58.

12. Management filed affidavit of witness Shri Gajendra Singh Senger. In his affidavit of evidence, management's witness says workman did not work in Telephone Exchange, he not completed 240 days working. Workman was not appointed by 2nd party. Management's witness in his cross-examination says he was posted at GTO/SDO at Gwalior during 1986 to 1999. That any document regarding working of the Ist party were not available with the department. Presently daily wage employee were not working. Work pertaining to cable line fault, digging ditches was carried by calling tender after issuing publication. The process of calling tender requires one month time. The tender used to be for a period of one year. The work of cable fault and digging ditches is carried as petty work engaging labours for short period. The labours engaged for petty work are paid from Advance fund of the department. The wages for short period of works are paid every day for the wages w.r.t. long period of work are paid by Accounts Office preparing bill and verifying it. 2nd party has not produced any of the bills or any record of payment of management's witness is not supported by documents.

13. Learned counsel for Ist party Shri N.K. Salunke at the time of argument submitted that evidence of witness working since 1957-58 is wrongly recorded. The counsel for 2nd party Shri R.S. Khare pointed out that witness is not re-examined for explaining evidence therefore argument advanced by learned counsel for Ist party on the point cannot be accepted. The evidence of Ist party and his witness is not consistent. When workman in his cross examination says he was discontinued in 1993, he did not work after 1993. His pleading and evidence are silent as to again when he was engaged. The evidence of workman and his witness is not sufficient to establish that workman was continuously working from 1987 to February 1998. It is difficult to believe that workman had worked for 240 days.

14. Learned counsel for 2nd party Shri R.S. Khare relies on ratio held in

Case of Batala Coop Sugar Mills versus Sowaran Singh reported in 2005(8) SCC-481. Their Lordship dealing with Section 25-F, H of ID Act held that burden of proof lies on workman to prove 240 days continuous service.

As workman himself admitted that not completed 240 days continuous service during any of the year, evidence of witnesses for the workman cannot be accepted on the point that workman completed 240 days continuous service. Workman has not produced any documents in support of his evidence. As such workman has failed to discharge onus that he completed 240 days continuous service. Therefore the termination of services of workman in violation of Section 25-F, G of ID Act is not established. Therefore I record my finding in Point A No. 1 in Affirmative.

15. Point No. 2- In view of my finding in Point No.1 workman has failed to establish termination of his service is illegal for violation of Section 25-F, G of ID Act, the ratio held in various cases by both the parties needs no detailed discussion.

16. In the result, award is passed as under:-

- (1) The action of the management of Telecom District Engineer (Phones), Guna in terminating Shri Chhotelal S/o Shri Komal singh w.e.f. 21-2-98 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/24/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/408/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/24/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No. L-40012/408/2000-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/24/2001

Shri Ramsingh, S/o Moolchand
Kapra Mohalla, H/o Dr. Chouhan,
Near Hanuman Chhattri, Raghogarh,
Guna

...Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,

Hoshangabad Road, MP Circle,
Bhopal (MP)

Distt. Engineer (Phones),
Guna

...Management

AWARD

Passed on this 9th day of March, 2016

1. As per letter dated 27-12-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/408/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of District Engineer (Phones), Guna in terminating Shri Ramsingh S/o Moolchand in the year 1999 is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/7. Case of Ist party workman is that he was initially appointed in 15-12-1988 for performing duties of phone mechanic on daily wage basis. His appointment was continued uninterruptedly till 31-3-99. He was orally terminated without issuing notice. Salary in lieu of notice, retrenchment compensation was also not paid to him. His services were terminated without assigning reasons. He completed 9 years 6 months continuous service. He completed more than 240 days service during each of the year.

3. 2nd party had not displayed list of all workmen of the categories working like him on notice board seven days before termination of his services. 2nd party violated Rule 77 of ID Central Rules 1957. Policy of last come first go was not followed while terminating his services. Number of daily wage employees were retained appointed subsequent to his termination. Workman was not re-engaged. That as per judgment in case, daily rated casual labours versus Union of India reported in AIR-1987-SC 2342, the workman was not absorbed/ regularized in service. The 2nd party engaged other daily wage workman violating Section 25 H of ID Act. Ist party alleges termination of his service from 31-3-99 is in violation of Section 25-F, G, H of ID Act. His termination of service is also alleged to be unfair labour practice. By amendment, Ist party workman submits that after termination of his service, he has no source of livelihood, he is not in gainful employment. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of the Ist party. That workman was not appointed on daily wages. He is not covered as workman. It is reiterated that the workman was not appointed in 1988. The post of DET was not created at Guna. The vacancies were not

published. Workman was not posted at Guna as labour in 1988. The engagement of daily wage workers was prohibited since 1985.

5. 2nd party further submits that for petty work or time bound work, the management engaged few labours on piece rate basis. On completion of such petty work, labours engaged were automatically retrenched. Workman had not completed 240 days continuous service. The labours engaged on daily wages were paid by local officers. The rate of petty work, time bound work was fixed time to time before-engaging workman. Ist party workman had not completed 240 days continuous service. He was not retained by 2nd party. Provisions of ID Act pertain to issuing notice of retrenchment or payment of retrenchment compensation are not applicable. The engagement of daily wage labours was prohibited since 1985. There was no question of preparing list as per Rule 77 of ID Central Rules 1958. That for execution of petty work, no record was maintained. Workman was neither appointed nor terminated by 2nd party. Violation of Section 25-F, G, H of ID Act is denied. 2nd party prays that reference be answered in its favour.

6. Ist party workman filed rejoinder reiterating his contentions in statement of claim. 2nd party denied that workman completed 240 days continuous service.

7. Additional Written Statement is filed by 2nd party after amendment in statement of claim. 2nd party contends that the workman engaged for specific work were given understanding that after completion of work, their services would come to end automatically.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--------------------|
| (i) Whether the action of the management of District Engineer (Phones), Guna in terminating Shri Ramsingh S/o Moolchand in the year 1999 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order |

REASONS

9. Ist party workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act, Rule 77 of ID Central Rules 1957. The application for production of documents was filed by Ist party on 9-9-07. The application was opposed by management. As per order dated 26-6-09, workman was given liberty to prove the documents required.

10. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged on daily wages from 15-12-88. He worked for 10 years 3

months. He completed 240-days continuous service. He submitted application for reinstatement on 23-2-98. His service terminated on 31-3-99 without notice. In his cross-examination workman says he passed HSc, presently working as labour. Appointment letter was not given to him. He not received interview call. He did not received letter from Employment Exchange. The list was displayed including his name. the name of about 20-25 persons were in the list. He was working in Telephone department, Guna District. He worked for 4 years at Raghavgarh. He also worked at Kamrag Exchange. He denied that he has not completed 240 days continuous service. Argument advanced by Shri R.S. Khare that in para 12 of his cross, workman admitted that he had not completed 240 days service in the year cannot be accepted as in cross-examination, workman has denied suggestion that he was giving false evidence and not completed 240 days working in a year.

11. Affidavit of witness Shri Premnarayan supported that he was working with workman from 1988 in Telecom Office, Guna. Payment was made obtaining signature on receipts duly stamped. Workman was terminated on 31-3-99 without notice. His services were terminated orally. In his cross-examination, he says that he knows workman since he was working with him. Work was closed in 1988. That he and workman did not work with contractor. He denied that he did not work in BSNL. He denied suggestion that as workman given evidence in his case, he is giving evidence in his support. That workman did not work in BSNL. The argument advanced that workman admitted that work was closed in 1998. Workman was not working in BSNL, witness has given evidence after long lapse of time. His evidence that he was working with workman is not shattered. Workman did not work in BSNL. Judicial note can be taken that Telecom Department since 2005 was merged in BSNL. The evidence of workman and his witness is that workman was terminated on 31-3-99. There was no question of his working in BSNL.

12. Management filed affidavit of witness Shri Gajendra Singh Senger. In his affidavit of evidence, management's witness says workman did not work in Telephone Exchange, he not completed 240 days working. Workman was not appointed by 2nd party. The cross-examination of management's witness was recorded in R/156/01, its certified copy is produced on record. Management's witness in his cross-examination says he was posted at GTO/SDO at Gwalior during 1986 to 1999. That any document regarding working of the Ist party were not available with the department. Presently daily wage employee were not working. Work pertaining to cable line fault, digging ditches was carried by calling tender after issuing publication. The process of calling tender requires one month time. The tender used to be for a period of one year. The work of cable fault and digging ditches is carried as petty work engaging labours for short period. The

labours engaged for petty work are paid from Advance fund of the department. The wages for short period of works are paid every day for the wages w.r.t. long period of work are paid by Accounts Office preparing bill and verifying it. 2nd party has not produced any of the bills or any record of payment of management's witness is not supported by documents. The evidence of Ist party and his witness Kamal Singh is not shattered about workman was working with 2nd party on daily wages from 15-12-88 to 31-3-99. If evidence of both parties is carefully scrutinized, it is clear that evidence of workman is corroborated by witness Kamal Singh whereas evidence of management's witness Gajendra Singh is not corroborated by any documents.

13. During course of argument, learned counsel for 2nd party Shri R.S.Khare submits that the witness of Ist party is interested witness. He is trying to support claim of workman cannot be believed. The evidence of Ist party witness is that he was working along with workman as such he is co-employee and I find no reason to disbelieve his unshattered evidence.

14. Learned counsel for 2nd party Shri R.S. Khare relies on ratio held in

Case of Batala Coop Sugar Mills versus Sowaran Singh reported in 2005(8) SCC-481. Their Lordship dealing with Section 25-F, H of ID Act held that burden of proof lies on workman to prove 240 days continuous service.

The evidence of workman and his witness is not shattered on the point workman was continuously working from September 1987 to 28-2-97. The evidence on record shows that workman completed 240 days continuous service preceding 12 months of his termination. His services are terminated without notice without displaying list of the labours on notice board. The termination of service of Ist party workman is in violation of Section 25-F, G and Rule 77 of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

15. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains whether workman is entitled for reinstatement with backwages. Learned counsel for Ist party Shri N.K.Salunke relies on ratio held in case between

Ashok Kumar Sharma versus Oberoi Flight Services reported in 2010(1) SCC-142. In above said case, workman was working as loader, he was found carrying 30KLM (a foreign airline) soup spoons illegally in his shoe. Workman admitted guilt in writing and so he was dismissed from service. The order of his compensation Rs.60,000 was set-aside. The compensation was enhanced to Rs. 2 Lakhs.

The facts of present case are not comparable. Ratio cannot be applied to case at hand as in above case, workman had admitted charges in writing.

In case of Deepali Gunhdu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10) SCC-324. Their Lordship held that denial of full backwages on reinstatement awarded by Tribunal. Their Lordship held that reinstatement entitles such employee to claim full backwages. Denial of backwages would amount to indirectly punishing the employee and rewarding employer by relieving him of the obligation to pay backwages.

The facts of above case are not comparable as in above cited case the appellant was appointed as teacher in primary school run by a trust. The appellant teacher had refused to contribute Rs.1500 per month towards the tax liability, towards recovery of tax of Rs. 79,974/-. Thereafter 25 memos were issued to appellant and the appellant was suspended. The ratio cannot be applied to case at hand.

The copies of award in R/26/01, 25/01 are also submitted by Ist party workman. The evidence adduced in the case is not comparable. Each case requires to be decided on the evidence adduced by the parties.

16. Shri R.S.Khare, learned counsel for 2nd party relies on ratio held in

Case of Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(5) SCC-136. Their Lordship considering service of daily wagger who worked for short period of 240 days only terminated by appellant employer in 1991 in contravention of Sec. 25-F of ID Act. The award of reinstatement with continuity of service with 25 % backwages was set aside and compensation Rs.50,000 was allowed.

In present case, the evidence on record shows workman was working from 15-12-88 to 31-3-99 and not only for 240 days therefore the ratio held in the case cannot be applied to case at hand.

In case of MP State Agro Industries Development and another versus Shri S.C.Pandey reported in 2006(2) SCC-716. Their Lordship dealing with status of daily wagger held daily wagger does not hold a post as he is not appointed in terms of the provisions of the Act and rules framed thereunder and therefore he does not derive any legal right. It is held that only because a temporary employee completes said period of service that by itself would not confer any legal right upon him to be regularized in service. Their Lordship allowed compensation Rs.10,000/-.

In case between Secretary, State of Karnataka and others versus Umadevi and others reported in

2006(4)SCC-1. Their Lordship dealing with public employment-Absorption, regularization or permanent continuance of temporary contractual, casual daily wage or ad hoc employees appointed/ recruited and continued for long in public employment dehors the constitutional scheme of public employment. It is erroneous for Supreme Court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for completing for employment. Further courts must be careful in ensuring that they do not interfere unduly with the economical/financial arrangement of the affairs of the State or its instrumentalities.

As evidence of workman shows that he was working from September 15-12-88 to 31-3-99 and termination of his service is without notice, retrenchment compensation was not paid to him. The pleadings and evidence of workman does not show what rate of wages were paid to him.

17. The evidence of workman shows he was not appointed following recruitment procedure. He was engaged on daily wages. Reinstatement of workman is not justified. Considering the period of work, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

18. In the result, award is passed as under:-

- (1) The action of the management of District Engineer(Phones), Guna in terminating Shri Ramsingh S/o Moolchand in the year 1999 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/23/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/407/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/23/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No. L-40012/407/2000-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/23/2001

Shri Premnarayan Ojha,
C/o Rambharosa Ohja,
H/o Salim Chacha,
Shivaji Nagar
Guna

...Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

Distt. Engineer (Phones),
Guna

...Management

AWARD

Passed on this 9th day of March, 2016

1. As per letter dated 27-12-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/407/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of District Engineer(Phones), Guna in terminating Shri Premnarayan Ojha, S/o Shri Ramprasad Ojha w.e.f. 21-2-98 is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/6. Case of Ist party workman is that he was initially appointed in 1-1-89 for performing duties of phone mechanic on daily wage basis. His appointment was continued uninterruptedly till 20-2-98. He was orally terminated without issuing notice. Salary in lieu of notice, retrenchment compensation was also not paid to him. His

services were terminated without assigning reasons. He completed 9 years continuous service. He completed more than 240 days service during each of the year.

3. 2nd party had not displayed list of all workmen of the categories working like him on notice board seven days before termination of his services. 2nd party violated Rule 77 of ID Central Rules 1957. Policy of last come first go was not followed while terminating his services. Number of daily wage employees were retained appointed subsequent to his termination. Workman was not re-engaged. That as per judgment in case, daily rated casual labours versus Union of India reported in AIR-1987-SC2342, the workman was not absorbed/regularized in service. The 2nd party engaged other daily wage workman violating Section 25 H of ID Act. Ist party alleges termination of his service from 20-2-98 is in violation of Section 25-F, G, H of ID Act. His termination of service is also alleged to be unfair labour practice. By amendment, Ist party workman submits that after termination of his service, he has no source of livelihood, he is not in gainful employment. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of the Ist party at Page 5/5 to 5/5. 2nd party contends that workman was not appointed on 1-1-1989 as Telephone labour. The post of SDO(T) was not created at Guna. The vacancy was not published. Workman was not posted as Telephone labour. Since 1985, appointment on daily wages were banned. 2nd party submits that for paid work/ time bound work, management engaged few labours on piece rate basis. After completion of time bound work, labours were automatically retrenched. For new work, again local officers engaged labour as per requirement in different stations. D.M.Guna fixed the rate of petty work/ time bound work from time to time before engaging any workman. The labours so engaged were given understanding that on completion of work, they would not be continued. Workman not completed 240 days continuous service. There is no question of payment of retrenchment compensation or issuing notice under ID Act. It is contented that as workman was not appointed, there was no question of displaying list of workers as per Rule 77 of ID Central Rules 1957. It is submitted that principle of last come first go is not applicable as workman was not appointed nor terminated by the management. No record is maintained regarding execution of petty work, time bound work. It is reiterated that workman has not completed 240 days service during any of the year. He not completed 240 days continuous service. 2nd party prays that reference be answered in its favour.

5. Ist party workman filed rejoinder reiterating his contentions in statement of claim. 2nd party denied that workman completed 240 days continuous service.

6. Additional Written Statement is filed by 2nd party after amendment in statement of claim. 2nd party contends that the workman engaged for specific work were given understanding that after completion of work, their services would come to end automatically.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) Whether the action of the management of District Engineer (Phones), Guna in terminating Shri Premnarayan Ojha, S/o Shri Ramprasad Ojha w.e.f. 21-2-98 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

8. Ist party workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act, Rule 77 of ID Central Rules 1957. The application for production of documents was filed by Ist party on 19-9-07. The application was opposed by management. As per order dated 26-6-09, workman was given liberty to prove the documents required.

9. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged on daily wages from 1-1-1989 till 20-2-98. He completed more than 240 days continuous service during each of the calendar year. His services were terminated on 20-2-98. On 23-1-98, he submitted application for regularization. In his cross-examination, workman says appointment letter was not given to him. He was not called for interview. He did not receive letter from Employment Exchange. He was working in Telecom Department in Guna District laying cables. He admits that not completed 240 days continuous service.

10. Ist party filed affidavit of witness Hargovind supporting evidence of workman that he was engaged on daily wages in 1989. His services were orally terminated without notice. Workman was working at different places for 9 years. In his cross-examination, witness says the dispute raised by him is pending. Workman given evidence in his matter. He denies that as workman given evidence in support of his claim that he was giving evidence to support claim of workman. Witness denies that workman was not working in BSNL. Workman was not working under the contractor or he did not work in the Telecom Department.

11. Witness Ram Singh also filed affidavit of his evidence supporting evidence of workman on material particulars stated in his cross-examination, he denied that he was working under contractor. Dispute raised by him is pending.

He denied that he was not working with workman. Workman has admitted in cross that he not completed 240 days working in any of the year.

12. Management filed affidavit of witness Shri Gajendra Singh Senger. In his affidavit of evidence, management's witness says workman did not work in Telephone Exchange, he not completed 240 days working. Workman was not appointed by 2nd party. The cross-examination of management's witness was recorded in R/156/01, its certified copy is produced on record. Management's witness in his cross-examination says he was posted at GTO/SDO at Gwalior during 1986 to 1999. That any document regarding working of the Ist party were not available with the department. Presently daily wage employee were not working. Work pertaining to cable line fault, digging ditches was carried by calling tender after issuing publication. The process of calling tender requires one month time. The tender used to be for a period of one year. The work of cable fault and digging ditches is carried as petty work engaging labours for short period. The labours engaged for petty work are paid from Advance fund of the department. The wages for short period of works are paid every day for the wages w.r.t. long period of work are paid by Accounts Office preparing bill and verifying it. 2nd party has not produced any of the bills or any record of payment of management's witness is not supported by documents. The evidence of Ist party and his witness Kamal Singh is not shattered about workman was working with 2nd party on daily wages from 1-1-89 till 20-2-98. If evidence of both parties is carefully scrutinized, it is clear that evidence of workman is not consistent with evidence of witness Kamal Singh.

13. Learned counsel for 2nd party Shri R.S. Khare relies on ratio held in

Case of Batala Coop Sugar Mills versus Sowaran Singh reported in 2005(8) SCC-481. Their Lordship dealing with Section 25-F, H of ID Act held that burden of proof lies on workman to prove 240 days continuous service.

As workman himself admitted that not completed 240 days continuous service during any of the year, evidence of witnesses for the workman cannot be accepted on the point that workman completed 240 days continuous service. Workman has not produced any documents in support of his evidence. As such workman has failed to discharge onus that he completed 240 days continuous service. Therefore the termination of services of workman in violation of Section 25-F, G of ID Act is not established. Therefore I record my finding in Point No.1 in Affirmative.

14. Point No.2- In view of my finding in Point No.1 workman has failed to establish termination of his service is illegal for violation of Section 25-F, G of ID Act, the ratio held in various cases by both the parties needs no detailed discussion.

15. In the result, award is passed as under:-

- (1) The action of the management of District Engineer(Phones), Guna in terminating Shri Premnarayan Ojha, S/o Shri Ramprasad Ojha w.e.f. 21-2-98 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer
नई दिल्ली, 31 मार्च, 2016

का.आ. 633.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/14/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/409/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/14/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No. L-40012/409/2000-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/14/2001

Shri Hargovind Sharma,
S/o Kamar ji Sharma,
R/o Kalapara, Near Hanuman Mandir,
Cantt. Guna

...Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

Distt. Engineer (Phones),
Guna

...Management

AWARD

Passed on this 9th day of March, 2016

1. As per letter dated 27-12-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/409/2000/IR(DU). The dispute under reference relates to:

“ Whether the action of the management of District Engineer(Phones), Guna in terminating Shri Hargovind Sharma, S/o Kararji Sharma w.e.f. 21-2-98 is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/6. Case of Ist party workman is that he was initially appointed in 15-1-1991 for performing duties of phone mechanic on daily wage basis. His appointment was continued uninterruptedly till 20-2-98. He was orally terminated without issuing notice. Salary in lieu of notice, retrenchment compensation was also not paid to him. His services were terminated without assigning reasons. He completed 7 years continuous service. He completed more than 240 days service during each of the year.

3. 2nd party had not displayed list of all workmen of the categories working like him on notice board seven days before termination of his services. 2nd party violated Rule 77 of ID Central Rules 1957. Policy of last come first go was not followed while terminating his services. Number of daily wage employees were retained appointed subsequent to his termination. Workman was not re-engaged. That as per judgment in case, daily rated casual labours versus Union of India reported in AIR-1987-SC2342, the workman was not absorbed/ regularized in service. The 2nd party engaged other daily wage workman violating Section 25 H of ID Act. Ist party alleges termination of his service from 1-3-97 is in violation of Section 25-F, G, H of ID Act. His termination of service is also alleged to be unfair labour practice. By amendment, Ist party workman submits that after termination of his service, he has no source of livelihood, he is not in gainful employment. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of the Ist party. That workman was not appointed on daily wages. He is not covered as workman. It is reiterated that the workman was not appointed in 1987. The post of DET was not created at Guna. The vacancies were not published. Workman was not posted at Guna as labour in 1987. The engagement of daily wage workers was prohibited since 1985.

5. 2nd party further submits that for petty work or time bound work, the management engaged few labours on

piece rate basis. On completion of such petty work, labours engaged were automatically retrenched. Workman had not completed 240 days continuous service. The labours engaged on daily wages were paid by local officers. The rate of petty work, time bound work was fixed time to time before engaging workman. Ist party workman had not completed 240 days continuous service. He was not retained by 2nd party. Provisions of ID Act pertain to issuing notice of retrenchment or payment of retrenchment compensation are not applicable. The engagement of daily wage labours was prohibited since 1985. There was no question of preparing list as per Rule 77 of ID Central Rules 1958. That for execution of petty work, no record was maintained. Workman was neither appointed nor terminated by 2nd party. Violation of Section 25-F, G, H of ID Act is denied. 2nd party prays that reference be answered in its favour.

6. Ist party workman filed rejoinder reiterating his contentions in statement of claim. 2nd party denied that workman completed 240 days continuous service.

7. Additional Written Statement is filed by 2nd party after amendment in statement of claim. 2nd party contends that the workman engaged for specific work were given understanding that after completion of work, their services would come to end automatically.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--------------------|
| (i) Whether the action of the management of District Engineer (Phones), Guna in terminating Shri Harvogind Sharma, S/o Kararji Sharma w.e.f. 21-2-98 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order |

REASONS

9. Ist party workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act, Rule 77 of ID Central Rules 1957. The application for production of documents was filed by Ist party on 19-6-01. The application was opposed by management. As per order dated 26-6-09, workman was given liberty to prove the documents required.

10. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged on daily wages in 15-1-91 till 20-2-98 at different places in Guna District for 7 years. He completed 240 days working. His services orally terminated on 21-2-98 without notice. Retrenchment compensation was not paid to him. Junior labours were continued on work. In his cross-examination, he studied upto 8th standard. He was working in Telephone

Exchange, Guna District. He was doing cleaning work and giving drinking water in office. Appointment letter was not received by him. List was displayed in the office, his name was included. List was not received by him. List of 90-91 was displayed including name of 30-40 persons, he was unable to tell the date. He repeatedly requested copy of list but list is not produced in the case. He was not interviewed. His name was not sponsored through Employment Exchange. He denied that he did not work for 240 days.

11. Ist party filed affidavit of witness Prem Narayan and Ram Singh supported the evidence of workman about his engagement and oral termination from service. Shri Prem Narayan in his cross examination says as he was working with Hargovind, he was giving evidence. He denies that as workman has given evidence in his case therefore he is giving evidence to support his claim. Witness admits that workman did not work in BSNL. Judicial note can be taken that Telecom Department since 2005 was merged in BSNL. The evidence of workman and his witness is that workman was terminated on 31-3-99. There was no question of his working in BSNL.

12. In cross-examination of Shri Ram Singh, he knows workman since he was working with him, they were not working under contractor. He is not giving evidence on say of workman. Suggestion is denied that he and workman were not working together. Appointment letter was not received by him. He worked from 1991 to 1998 for a period of 7 years.

13. Management filed affidavit of witness Shri Gajendra Singh Senger. In his affidavit of evidence, management's witness says workman did not work in Telephone Exchange, he not completed 240 days working. Workman was not appointed by 2nd party. The cross-examination of management's witness was recorded in R/156/01, its certified copy is produced on record. Management's witness in his cross-examination says he was posted at GTO/SDO at Gwalior during 1986 to 1999. That any document regarding working of the Ist party were not available with the department. Presently daily wage employee were not working. Work pertaining to cable line fault, digging ditches was carried by calling tender after issuing publication. The process of calling tender requires one month time. The tender used to be for a period of one year. The work of cable fault and digging ditches is carried as petty work engaging labours for short period. The labours engaged for petty work are paid from Advance fund of the department. The wages for short period of works are paid every day for the wages w.r.t. long period of work are paid by Accounts Office preparing bill and verifying it. 2nd party has not produced any of the bills or any record of payment of management's witness is not supported by documents. The evidence of Ist party and his witness Kamal Singh is not shattered about workman

was working with 2nd party on daily wages from September 15-1-91 to 20-2-98. If evidence of both parties is carefully scrutinized, it is clear that evidence of workman is corroborated by witness Kamal Singh whereas evidence of management's witness Gajendra Singh is not corroborated by any documents.

14. During course of argument, learned counsel for 2nd party Shri R.S. Khare submits that the witness of Ist party is interested witness. He is trying to support claim of workman cannot be believed. The evidence of Ist party witness is that he was working alongwith workman as such he is co-employee and I find no reason to disbelieve his unshattered evidence. The argument advanced by Shri R.S. Khare that witness of workman in his cross-examination says that workman worked for 26 days only. The evidence is not sufficient to establish 240 days continuous service cannot be accepted. Witness of Ist party Shri Kamal Singh in his cross examination says workman was working for 26 days during each of the month.

15. Learned counsel for 2nd party Shri R.S. Khare relies on ratio held in

Case of Batala Coop Sugar Mills versus Sowaran Singh reported in 2005(8) SCC-481. Their Lordship dealing with Section 25-F, H of ID Act held that burden of proof lies on workman to prove 240 days continuous service.

The evidence of workman and his witness is not shattered on the point workman was continuously working from 15-1-91 to 20-2-98. The evidence on record shows that workman completed 240 days continuous service preceding 12 months of his termination. His services are terminated without notice without displaying list of the labours on notice board. The termination of service of Ist party workman is in violation of Section 25-F,G and Rule 77 of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

16. Point No. 2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains whether workman is entitled for reinstatement with backwages. Learned counsel for Ist party Shri N.K. Salunke relies on ratio held in case between

Ashok Kumar Sharma versus Oberoi Flight Services reported in 2010(1)SCC-142. In above said case, workman was working as loader, he was found carrying 30KLM (a foreign airline) soup spoons illegally in his shoe. Workman admitted guilt in writing and so he was dismissed from service. The order of his compensation Rs. 60,000 was set-aside. The compensation was enhanced to Rs. 2 Lakhs.

The facts of present case are not comparable. Ratio cannot be applied to case at hand as in above case, workman had admitted charges in writing.

In case of Deepali Gunhdu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. Their Lordship held that denial of full backwages on reinstatement awarded by Tribunal. Their Lordship held that reinstatement entitles such employee to claim full backwages. Denial of backwages would amount to indirectly punishing the employee and rewarding employer by relieving him of the obligation to pay backwages.

The facts of above case are not comparable as in above cited case the appellant was appointed as teacher in primary school run by a trust. The appellant teacher had refused to contribute Rs. 1500 per month towards the tax liability. Towards recovery of tax of Rs. 79,974/-. Thereafter 25 memos were issued to appellant and the appellant was suspended. The ratio cannot be applied to case at hand.

The copies of award in R/26/01, 25/01 are also submitted by Ist party workman. The evidence adduced in the case is not comparable. Each case requires to be decided on the evidence adduced by the parties.

17. Shri R.S. Khare, learned counsel for 2nd party relies on ratio held in

Case of Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(5)SCC-136. Their Lordship considering service of daily wager who worked for short period of 240 days only terminated by appellant employer in 1991 in contravention of Sec 25-F of ID Act. The award of reinstatement with continuity of service with 25 % backwages was set aside and compensation Rs. 50,000 was allowed.

In present case, the evidence on record shows workman was working from 15-1-91 to 20-2-98 and not only for 240 days therefore the ratio held in the case cannot be applied to case at hand.

In case of MP State Agro Industries Development and another versus Shri S.C. Pandey reported in 2006(2)SCC-716. Their Lordship dealing with status of daily wager held daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and rules framed there under and therefore he does not derive any legal right. It is held that only because a temporary employee completes said period of service that by itself would not confer any legal right upon him to be regularized in service. Their Lordship allowed compensation Rs. 10,000/-.

In case between Secretary, State of Karnataka and others versus Umadevi and others reported in

2006(4)SCC-1. Their Lordship dealing with public employment- Absorption, regularization or permanent continuance of temporary contractual, casual daily wage or adhoc employees appointed/ recruited and continued for long in public employment dehors the constitutional scheme of public employment. It is erroneous for supreme court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for completing for employment. Further courts must be careful in ensuring that they do not interfere unduly with the economical/ financial arrangement of the affairs of the State or its instrumentalities.

As evidence of workman shows that he was working from 15-1-91 to 20-2-98 and termination of his service is without notice, retrenchment compensation was not paid to him. The pleadings and evidence of workman does not show what rate of wages were paid to him.

18. The evidence of workman shows he was not appointed following recruitment procedure. He was engaged on daily wages. Reinstatement of workman is not justified. Considering the period of work, compensation Rs. 75,000/- would be appropriate. Accordingly I record my finding in Point No. 2.

19. In the result, award is passed as under:-

- (1) The action of the management of District Engineer (Phones), Guna in terminating Shri Harvogind Sharma, S/o Kararji Sharma w.e.f. 21-2-98 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. 75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 31 मार्च, 2016

का.आ. 634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सीजीआईटी/एलसी/आर/15/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/411/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st March, 2016

S.O. 634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. CGIT/LC/R/15/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 31-03-2016.

[No. L-40012/411/2000-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/15/2001

Shri Vijay Singh Kushwaha,
S/o Kamarji Kushwaha,
R/o Shri Ram Colony, Tehsil Guna
Guna

...Workman

Versus

Chief General Manager,
Deptt. of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

Distt. Engineer (Phones),
Guna

...Management

AWARD

Passed on this 9th day of March, 2016

1. As per letter dated 27-12-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/411/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of District Engineer (Phones), Guna in terminating Shri Vijay Singh Kushwaha S/o Kamarji Kushwaha w.e.f. 1-3-97 is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/6. Case of Ist party workman is that he was initially appointed in September 1987 for performing duties of phone mechanic on daily wage basis. His appointment was continued uninterruptedly till 28-2-97. He was orally terminated without issuing notice. Salary in lieu of notice, retrenchment compensation was also not paid to him. His services were terminated without assigning reasons. He

completed 9 years 6 months continuous service. He completed more than 240 days service during each of the year.

3. 2nd party had not displayed list of all workmen of the categories working like him on notice board seven days before termination of his services. 2nd party violated Rule 77 of ID Central Rules 1957. Policy of last come first go was not followed while terminating his services. Number of daily wage employees were retained appointed subsequent to his termination. Workman was not re-engaged. That as per judgment in case, daily rated casual labours versus Union of India reported in AIR-1987-SC2342, the workman was not absorbed/regularized in service. The 2nd party engaged other daily wage workman violating Section 25 H of ID Act. Ist party alleges termination of his service from 1-3-97 is in violation of Section 25-F, G, H of ID Act. His termination of service is also alleged to be unfair labour practice. By amendment, Ist party workman submits that after termination of his service, he has no source of livelihood, he is not in gainful employment. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of the Ist party. That workman was not appointed on daily wages. He is not covered as workman. It is reiterated that the workman was not appointed in 1987. The post of DET was not created at Guna. The vacancies were not published. Workman was not posted at Guna as labour in 1987. The engagement of daily wage workers was prohibited since 1985.

5. 2nd party further submits that for petty work or time bound work, the management engaged few labours on piece rate basis. On completion of such petty work, labours engaged were automatically retrenched. Workman had not completed 240 days continuous service. The labours engaged on daily wages were paid by local officers. The rate of petty work, time bound work was fixed time to time before engaging workman. Ist party workman had not completed 240 days continuous service. He was not retained by 2nd party. Provisions of ID Act pertain to issuing notice of retrenchment or payment of retrenchment compensation are not applicable. The engagement of daily wage labours was prohibited since 1985. There was no question of preparing list as per Rule 77 of ID Central Rules 1958. That for execution of petty work, no record was maintained. Workman was neither appointed nor terminated by 2nd party. Violation of Section 25-F, G, H of ID Act is denied. 2nd party prays that reference be answered in its favour.

6. Ist party workman filed rejoinder at Page 7/1 to 7/4 reiterating his contentions in statement of claim. 2nd party denied that workman completed 240 days continuous service.

7. Additional Written Statement is filed by 2nd party after amendment in statement of claim. 2nd party contends that the workman engaged for specific work were given understanding that after completion of work, their services would come to end automatically.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--------------------|
| (i) Whether the action of the management of District Engineer (Phones), Guna in terminating Shri Vijay Singh Kushwaha S/o Kamarji Kushwaha w.e.f. 1-3-97 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order |

REASONS

9. Ist party workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act, Rule 77 of ID Central Rules 1957. The application for production of documents was filed by Ist party on 19-9-97. The application was opposed by management. As per order dated 26-6-09, workman was given liberty to prove the documents required.

10. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged on daily wages in September 1987 to 28-2-97. He completed more than 240 days continuous service during each of the calendar year. As per circular dated 10-9-93, he was not accorded temporary status. On 28-2-97, his services were orally terminated without notice, retrenchment compensation was not paid to him. In his cross-examination, workman says appointment letter was not received by him. He did not received letter for interview. He not received letter from Employment Exchange. He did not receive order of termination of his services. He denied that he did not work in BSNL. He denied that he produced bogus documents, he denied that he was working under contractor.

11. Ist party filed affidavit of witness Kamal Singh. Said witness corroborated evidence of workman that workman was working from September 87 to 28-2-97 in Telecom Department, Guna. Workman was working at different places with him. The wages were paid in first week of month obtaining their receipts. Workman had worked more than 240 days during each of the year. His services were terminated without notice. Retrenchment compensation was not paid to him. After termination of his services, family of workman is facing hardship. In his cross-examination, the above named witness says he has not received education. Workman was working with him therefore he was acquainted with workman. Workman was

working at Guna with him from 1987. Suggestion is denied that if affidavit of evidence is prepared as per instructions given by workman. Appointment letter was not received by him. Workman worked 26 days in every month. In January 1996, workman worked for 26 days. Department was paying minimum wages therefore he was knowing about it. The witness denied that workman had not completed 240 days continuous service. He denied that he was giving evidence as per say of workman. The evidence of workman is corroborated from evidence of his witness.

12. Management filed affidavit of witness Shri Gajendra Singh Senger. In his affidavit of evidence, management's witness says workman did not work in Telephone Exchange, he not completed 240 days working. Workman was not appointed by 2nd party. The cross-examination of management's witness was recorded in R/156/01, its certified copy is produced on record. Management's witness in his cross-examination says he was posted at GTO/SDO at Gwalior during 1986 to 1999. That any document regarding working of the Ist party were not available with the department. Presently daily wage employee were not working. Work pertaining to cable line fault, digging ditches was carried by calling tender after issuing publication. The process of calling tender requires one month time. The tender used to be for a period of one year. The work of cable fault and digging ditches is carried as petty work engaging labours for short period. The labours engaged for petty work are paid from Advance fund of the department. The wages for short period of works are paid every day for the wages w.r.t. Long period of work are paid by Accounts Office preparing bill and verifying it. 2nd party has not produced any of the bills or any record of payment of management's witness is not supported by documents. The evidence of Ist party and his witness Kamal Singh is not shattered about workman was working with 2nd party on daily wages from September 1987 to 28-2-97. If evidence of both parties is carefully scrutinized, it is clear that evidence of workman is corroborated by witness Kamal Singh whereas evidence of management's witness Gajendra Singh is not corroborated by any documents.

13. During course of argument, learned counsel for 2nd party Shri R.S.Khare submits that the witness of Ist party is interested witness. He is trying to support claim of workman cannot be believed. The evidence of Ist party witness is that he was working along with workman as such he is co-employee and I find no reason to disbelieve his unshattered evidence. The argument advanced by Shri R.S.Khare that witness of workman in his cross-examination says that workman worked for 26 days only. The evidence is not sufficient to establish 240 days continuous service cannot be accepted. Witness of Ist party Shri Kamal Singh in his cross-examination says workman was working for 26 days during each of the month.

14. Learned counsel for 2nd party Shri R.S.Khare relies on ratio held in

Case of Batala Coop Sugar Mills versus Sowaran Singh reported in 2005(8) SCC-481. Their Lordship dealing with Section 25-F, H of ID Act held that burden of proof lies on workman to prove 240 days continuous service.

The evidence of workman and his witness is not shattered on the point workman was continuously working from September 1987 to 28-2-97. The evidence on record shows that workman completed 240 days continuous service preceding 12 months of his termination. His services are terminated without notice without displaying list of the labours on notice board. The termination of service of Ist party workman is in violation of Section 25-F, G and Rule 77 of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

15. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains whether workman is entitled for reinstatement with backwages. Learned counsel for Ist party Shri N.K.Salunke relies on ratio held in case between

Ashok Kumar Sharma versus Oberoi Flight Services reported in 2010(1)SCC-142. In above said case, workman was working as loader, he was found carrying 30KLM (a foreign airline) soup spoons illegally in his shoe. Workman admitted guilt in writing and so he was dismissed from service. The order of his compensation Rs.60,000 was set-aside. The compensation was enhanced to Rs. 2 Lakhs.

The facts of present case are not comparable. Ratio cannot be applied to case at hand as in above case, workman had admitted charges in writing.

In case of Deepali Gunhdu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. Their Lordship held that denial of full backwages on reinstatement awarded by Tribunal. Their Lordship held that reinstatement entitles such employee to claim full backwages. Denial of backwages would amount to indirectly punishing the employee and rewarding employer by relieving him of the obligation to pay backwages.

The facts of above case are not comparable as in above cited case the appellant was appointed as teacher in primary school run by a trust. The appellant teacher had refused to contribute Rs.1500 per month towards the tax liability towards recovery of tax of Rs. 79,974/-. Thereafter 25 memos were issued to appellant and the appellant was suspended. The ratio cannot be applied to case at hand.

The copies of award in R/26/01, 25/01 are also submitted by Ist party workman. The evidence adduced in

the case is not comparable. Each case requires to be decided on the evidence adduced by the parties.

16. Shri R.S.Khare, learned counsel for 2nd party relies on ratio held in

Case of Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(5)SCC-136. Their Lordship considering service of daily wager who worked for short period of 240 days only terminated by appellant employer in 1991 in contravention of Sec. 25-F of ID Act. The award of reinstatement with continuity of service with 25 % backwages was set aside and compensation Rs.50,000 was allowed.

In present case, the evidence on record shows workman was working from 1987 to 28-2-97 and not only for 240 days therefore the ratio held in the case cannot be applied to case at hand.

In case of MP State Agro Industries Development and another versus Shri S.C.Pandey reported in 2006(2)SCC-716. Their Lordship dealing with status of daily wager held daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and rules framed thereunder and therefore he does not derive any legal right. It is held that only because a temporary employee completes said period of service that by itself would not confer any legal right upon him to be regularized in service. Their Lordship allowed compensation Rs.10,000/-.

In case between Secretary, State of Karnataka and others versus Umadevi and others reported in 2006(4)SCC-1. Their Lordship dealing with public employment- Absorption, regularization or permanent continuance of temporary contractual, casual daily wage or ad hoc employees appointed/ recruited and continued for long in public employment de hors the constitutional scheme of public employment. It is erroneous for supreme court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for completing for employment. Further courts must be careful in ensuring that they do not interfere unduly with the economical/ financial arrangement of the affairs of the State or its instrumentalities.

As evidence of workman shows that he was working from September 1987 to 28-2-97 and termination of his service is without notice, retrenchment compensation was not paid to him. The pleadings and evidence of workman does not show what rate of wages were paid to him.

17. The evidence of workman shows he was not appointed following recruitment procedure. He was engaged on daily wages. Reinstatement of workman is not justified. Considering the period of work,

compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

18. In the result, award is passed as under:-

- (1) The action of the management of District Engineer(Phones), Guna in terminating Shri Vijay Singh Kushwaha S/o Kamarji Kushwaha w.e.f. 1-3-97 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2016

का.आ. 635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बोर्ड ऑफ सेकेंडरी एजुकेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 19/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.04.2016 को प्राप्त हुआ था।

[सं. एल-42012/135/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 4th April, 2016

S.O. 635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 19/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Board of Secondary Education and their workman, which was received by the Central Government on 01-04-2016.

[No. L-42012/135/2013-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, DELHI**

ID No. 19/2014

Shri Ramesh Kumar,
S/o Shri Ramphal,
F-282, Lado Sarai, Mehrauli,
New Delhi 110 030

...Workman

Versus

The Secretary,
Central Board of Secondary Education,
2, Samudaik Centre, Preet Vihar,
Delhi 110 092

...Management

AWARD

Brief facts giving rise to filing of the present reference are that the workman herein was engaged as Junior Assistant on daily wage basis by the management in the year 1996 and since then the workman had been working continuously with Central Board of Secondary Education (CBSE). It is alleged that after his appointment firstly worked in the year 1998 and after that in the year 1999-2000 and last February 2005 to May 2005 without any notice. The workman worked to the satisfaction of the management, honestly and diligently. In fact the workman was to be absorbed against permanent vacancy since the nature of duties performed by the workman was perennial in nature. Workman was recruited through Employment Exchange and there was no back door entry.

2. It is further the case of the workman that the Hon'ble High Court of Delhi directed the management to prepare seniority list of daily wagers after considering their respective claims. In compliance of the directions of the Hon'ble High Court vide order dated 12.0.2004 in the case titled as 'Ramakant Sharma Vs. CBSE' vide WP No.2292 of 1999, wherein name of the workman was at serial No.17 as petitioner, a common seniority list was prepared by the management of CBSE and in that list name of the workman appeared as serial No.85.

3. Later on, in May 2005, services of the workman was illegally terminated without any prior notice or intimation or following statutory provisions of the Industrial Disputes Act, 1947 (in short the Act). Thereafter, workman herein, number of times visited the office of the management regarding his reinstatement in service but to no use. When the seniority list was displayed by the management, the workman found that his address was incorrectly mentioned as E-282 Lado Sarai, Mehrauli, New Delhi instead of F-282, Lado Sarai, Mehrauli, New Delhi. Thereafter, when he approached the concerned authority regarding the wrong address, assurance was given by the management that the address would be corrected soon. Workman also moved a complaint to the management on 05.01.2007.

4. There are also averments that complaint was filed before the Assistant Labour Commissioner on 13.03.2012 and 19.06.2010 and the Labour Commissioner called both the parties but the management was not willing to compromise/settle the matter with the workman. The Labour Commissioner transferred the case to the Secretary, Government of India, Ministry of Labour and it was thereafter that a reference was received by this Tribunal vide letter No.L-42012/135/2013-IR(DU) dated 29.01.2014 with the following terms:

‘Whether the action of the management of Central Board of Secondary Education in terminating the services of Shri Ramesh Kumar S/o Shri Ramphal, Ex/Junior Assistant with effect from May 2005 is justified or not? If not, what relief will be given to the workman and from which date?’

5. After putting notice to both the parties, workman herein filed statement of claim in the manner stated above and reply thereto was filed by the management wherein management took preliminary objections that CBSE does not call within the definition of ‘industry’ as defined under Section 2(j) of the Act. CBSE was constituted in pursuant to Government of India Resolution dated 27.02.1962 and as such is an instrumentality of State. It is an autonomous institute under the Ministry of Human Resource Development, Government of India. Management has also referred to the judgement in Bangalore Water Supply and Sewerage Board vs. Rajappa (AIR 1978 SC 548) wherein triple test so as to establish entity to be an industry has been laid down and the same is (i) Systematic activity, (ii) Organized by Co-operation between employer & employee and (iii) For the production and or distribution of goods and services calculated to satisfy human wants and wishes. CBSE meets first two tests but not the third, as such it is not an industry. It is also alleged that it is a stale case as claimants services were terminated in 2005. However, reference in the case has been made late. Reference also does not say whether it is a case of retrenchment as defined under Section 2(oo) of the Act.

6. On merits, it is prayed in para 1 and 2 of the written statement that the workman herein has worked from 15.11.1996 to 16.12.1996, i.e. only for 32 days in a span of 14 months. He was never appointed to the post of Junior Assistant in regular or temporary capacity nor against a regular or future vacancy. The burden to prove the employment lies on the claimant. He was simply appointed on daily wage bases vide letter dated 21.01.1998. He along with other workmen was called for seasonal work of CBSE but these engagements were purely on daily wages to attend the seasonal work. Claim of the workman that he has worked continuously till 2005 is totally denied. Details of work done by the claimant is as under:

| Sl. No. | Year | Period | | Total days (including Sundays & Holidays) |
|---------|------|--------------------------|--------------------------|---|
| | | From | Upto | |
| 1 | 2 | 3 | 4 | 5 |
| 1. | 1996 | 15.11.1996 | 16.12.1996 | 32 |
| 2. | 1997 | Nil | Nil | 00 |
| 3. | 1998 | 27.01.1998 | 31.03.1998 | 63 |
| 4. | 1999 | 15.02.1999 31.03.1999 | 28.03.1999 30.04.1999 | 73 |

| 1 | 2 | 3 | 4 | 5 |
|-----|------|--------------|-----------------|------------|
| 5. | 2000 | Nil | Nil | 00 |
| 6. | 2001 | 08.05.2001 | 31.07.2001 | 85 |
| 7. | 2002 | Nil | Nil | 00 |
| 8. | 2003 | Nil | Nil | 00 |
| 9. | 2004 | Nil | Nil | 00 |
| 10. | 2005 | 03.03.2005 | 30.06.2005 | 120 |
| | | Total | 10 years | 373 |

7. Above details clearly shows that the workman did not work for a single day during the calendar 1997, 2000 and 2002 to 2004. In a span of 10 years, he worked only for 373 days. It has been admitted that seniority list was prepared by the management in view of the directions of the Hon’ble High Court of Delhi. The seniority list was displayed and the claimants name appears at serial No.85 with residential address at E-282, Lado Sarai, Mehrauli, New Delhi. Objections were invited and no objection relating to his seniority or address was received from the claimant. Claimant has no vested right to get permanent employment. Work for which he was engaged was purely on seasonal and contractual in nature. The workman has not completed 240 days in any given year. Remaining averments contained the statement of defence has been denied by the management.

8. Against this factual background, my learned predecessor, vide a order dated 03.06.2014, framed the following issues:

- (1) Whether management is an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947?
- (2) Whether the claimant has rendered continuous service of 240 days in preceding 12 months from the date of his alleged retrenchment?
- (3) As in terms of reference.

9. Workman herein, in order to discharge onus on the issues examined himself as WW1 and tendered in evidence Ex.WW1/1 to Ex.WW1/11. There is no cross-examination of the workman herein as the management has been proceeded ex-parte on 01.06.2015. It is apposite to mention here that the management did not cross-examine the workman herein nor adduced any evidence worth the name so as to prove its stand that the CBSE does not fall within the definition of ‘industry’ of that the workman has not worked for 240 days in any calendar year.

Findings on Issue No.1

10. Shri Mohd. Shahwaz, authorized representative appearing on behalf of the claimant urged that management of CBSE falls within the definition of industry as defined

under Section 2(j) of the Act. Before I proceed to consider the question whether CBSE falls within the definition of industry or not, it is appropriate to reproduce the definition of industry under section 2(j), and the same is as under:

“industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen”.

11. It is further clear from perusal of the above definition that (1) The definition of “industry” in the Act is very comprehensive. It is in two parts : one part defines it from the stand-point of the employer and the other from the stand-point of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. While considering question whether a particular institution or Corporation or Board falls within the definition of industry, it is necessary to remember that the Act is a legislation intended to bring about peace and harmony between management and labour in an industry so that production does not suffer and at the same time there is no exploitation of labour employed by such industry or its day to day work. Whenever such a question arises whether a particular concern is an industry or not, approach must be broad & liberal and not rigid and doctrinaire. Interpretation should be such as would advance object and purpose of the Act and give full meaning and effect to it in the achievement of its avowed social objectives.

12. I have carefully gone through the ration of judgement in Bangalore Water Supply and Sewerage (supra) and there is not an inkling in the said authority that CBSE would not fall within the definition of industry. Rather the management in its pleadings referred to the three basic attributes laid down in the said case and only the first two attributes are fulfilled by the management. To my mind when a workman has been engaged by the CBSE to do a particular kind of work on daily basis, then relationship of employer and employee stands established and management cannot take the plea that in the Act, the Tribunal does not have jurisdiction to try the case. Even no such objection was taken before the ALC and it is only made thereafter when Government made reference to this Tribunal for adjudication of the case. Resultantly, it is held that in the case in hand management falls within the definition of industry.

Findings on Issue No. 2

13. Management, in its pleadings, has specifically avred that the workman has not rendered continuous service for 240 days in any calendar year and also alleged that the workman herein has worked only for 373 days in 10 years. At this stage, it is appropriate to refer to the facts averred by the workman in this behalf. Workman in his pleadings has specifically stated that he was engaged in the year

1996 by the management and was appointed through Employment Exchange and it was not a case of back door entry. This fact has been specifically denied by the management. There is also reference to the writ petition 2292 of 1999 wherein the petitioner has specifically stated that his name is at serial No.17. All these facts are reiterated by him in his affidavit Ex.WW1/A also. There is no cross examination of the workman on that point. Law is fairly well settled that if a witness has deposed a particular fact in his statement and he is not cross examined by the opposite party on that point or that fact is not specifically denied by the opposite party, in that eventuality, such fact shall be deemed to be admitted. It is pertinent to mention here that the management in its reply in para 1 and 2 has admitted that he was engaged on daily wage basis vide letter dated 21.01.1998. It is further averred by the management that he was doing seasonal work of the management and this engagement was purely on daily wage basis to attend to seasonal work. When the workman stated that he has worked for 240 days or he has worked regularly in a calendar year for 240 days, onus to prove to the contrary is upon the management. Hon'ble Apex Court in the case of Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd. (2014) 11 SCC 85 dealt with the question of termination of services of a daily wager who has rendered service for six years and it was held that when the workman has stated that he was out of employment, onus to prove that the workman was in service would shift upon the employer.

14. Further, the fact that in the writ petition name of the petitioner was mentioned as co-petitioner also prima facie shows that at all the material times, workman was in the employment of the management. It is further clear from memorandum WW1/1 that he was appointed as Junior Assistant on daily wages basis vide letter dated 21.01.1998. The list of employees Ex.WW1/2 also shows mentions the name of the workman herein at serial No.85, which further shows that the workman in the year 18/996 worked from 15.11.1996 to 26.12.1996 and 29.12.1996 to 08.02.1997 but there is no mention of the engagement in the subsequent period in the above list. However, factum of engagement of the workman in 1996 stands duly established from the above letter and stand of the management that he was not employed in the year 1997 stands falsified. Workman has also filed Ex.WW1/3 wherein he has mentioned that his address has not been properly mentioned in the seniority list of the management and the same be corrected in the manner discussed above. There is also a letter Ex.WW1/4 wherein request has been made for his reinstatement. In the said letter, it is mentioned that it was in the year 2007 that his services were terminated and since then he is unemployed. He has to feed his family, including his aged parents and his mother is suffering from several deceases. Workman has also sent letter to Assistant Labour Commissioner vide letter dated 13.03.2002 Ex.WW1/5,

wherein it is clearly mentioned that he has written several letters to the management for taking him back into service, but of no use. Letter WW1/6 issued by the management shows that the name of the workman herein was not included in the seniority list of Junior Assistants and he has not reported for duties since 2006. It is clear from evidence on record that address of the workman herein was wrongly mentioned in the seniority list and the workman has specifically brought this fact to the notice of the management of CBSE by writing letter Ex.WW1/3. It is further clear that after 2006, the workman was not in the employment of the management and management did not show name of the workman herein in the seniority list of Junior Assistants because he was not reporting for duties. However, this Tribunal cannot ignore the fact that address of the workman was not proper and as such any letter dispatched at the above address which was not correct cannot be construed that the workman was having knowledge of termination of his job in 2006-07. It is also relevant to point out here that the workman has specifically deposed that even after 2007, he has approached the management several times so as to given him employment, but the management has not paid any heed to the request of the workman. In such a situation, when name of the workman was initially shown in the writ petition filed before Hon'ble High Court at serial No.17 and other correspondence record also shows that he was in the employment of the management, as such, it is held that the workman herein has worked for 240 days or more in a calendar year, particularly when no evidence worth the name was adduced by the management so as to prove its stand that the workman has not worked for requisite number of days in a calendar year.

15. Now, the residual question which survives for consideration is whether termination of services of he workman herein in May, 2005 is justified or not. As discussed above, it has come in evidence that the workman has tried to approach the management on several occasions so as to get his employment even after 2005. There is no evidence on record to show that any notice was served on the workman before ordering his termination nor salary in lieu of notice was paid to the workman before ordering his termination. Thus, there is clear cut violation of provisions of Section 25 F of the Act. Since the workman in the case in hand rendered almost regular service with artificial breaks as discussed above, as such, termination of his services without complying with the mandatory requirement of section 25 F of the Act is held to be illegal and not justified under the law. It has also come in evidence that the workman has a big family support and he is not in any other employment. Ordinarily settled principles of law is that the workman is entitled for reinstatement with full back wages when his termination is held to be illegal. Hon'ble Apex Court in the case of BSNL Vs. Bhurumal

(2014) 7 SCC 177 held that this principle cannot be applied in a mechanical manner. While that may be the position where services of regular/permanent workmen are terminated illegally and or in a malafide manner by way of victimization. However, in cases where terminate of daily wager workers and such workmen is found to be illegal because of procedural defects, i.e. in violation of provisions of Section 25F of the act, reinstatement with back wages is not to be automatic. Instead, workman may be given monetary compensation if the facts and given circumstances of the case so warrants. However, situation would be different when employment is still available with the management and the workman is ready and willing to work against that post. No doubt in the case in hand, reference has been made by the Central Government requiring it adjudicate the case, but merely delay in making reference to this Tribunal would not deprive the workman of his legal rights in case his services have been terminated in violation of provisions of the Act or principles of natural justice. As reference in the present case was received on 29.01.2014 after expiry of nearly nine years and as such, this Tribunal is of the view that back wages are to be granted to the workman herein from the date of raising dispute till reinstatement. I find support to this view from the case of Raghbir Singh versus General Manager, Haryana Roadways, Hissar, 2014 AIR SCW 5515 wherein it was also the case where reference was virtually stale or was made very belatedly on account of delay caused by the workman.

Relief

16. As a sequel to the discussions herein above, workman is entitled to be taken back in service with all consequential benefits from the date of his termination and is entitled to back wages from the date of raising the dispute till reinstatement. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 29, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2016

का.आ. 636.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अशोक होटल, दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 69/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.04.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 4th April, 2016

S.O. 636.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 69/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ashok Hotel, Delhi and their workman, which was received by the Central Government on 01-04-2016.

[No.L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, DELHI**

ID No. 69/2012

Shri Lalit Kumar Vashishta &
Shri Bhupender Singh Bhandari, through
The President
Ashok Hotel Mazdoor Janta Union,
Ashok Hotel,
Staff Quarter No. C-48-49,
50-B, Chanakyapuri,
New Delhi –110 021

...Workman

Versus

The General Manager (HR),
Ashok Hotel, 50-B,
Chanakyapuri,
Delhi –110 021

...Management

AWARD

Brief facts giving rise to the present case are that the workmen herein directly raised a dispute before this Tribunal under provisions of sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 (in short the Act) in as much as period of 45 days stood expired from the date of making his application before the Conciliation Officer and no reference is required under the Act by the Tribunal from the appropriate Government after the said period.

2. It is averred in the statement of claim that the workmen mentioned in the head note of the petition were working in Ashok Hotel since July, 2004 and January, 2006 respectively to the satisfaction of the management of Ashok Hotel. There was no complaint against the said workmen and their group leader has also appreciated their services. The workmen were working in the premises of Ashok Hotel against permanent posts lying vacant in Ashok Hotel. Officials of Ashok Hotel used to assign the job or work to the workmen and also used to mark their

attendance and supervision of the work/job was under the control of management of Ashok Hotel.

3. It is further the case of the workmen that they have filed proper applications and they were also interviewed by the officials of Ashok Hotel before their appointment. However, instead of giving direct letter of appointment through management of Ashok Hotel, they were issued letters through the contractor, M/s Recruitment Bureau so as to deprive them of proper pay-scales as well as other benefits applicable to the post of cashier. Workmen were working in the restaurants of Ashok Hotel, dealing with cash. However, they were not paid cash handling allowance of Rs.200.00 per month, which they were entitled as per rules. It is pertinent to mention here that the workmen were working with the permanent cashiers appointed by the management of Ashok Hotel, who were being paid regular pay scale of cashier, alongwith other allowances whereas the workmen herein were paid less salary starting from Rs.7000.00 per month and at the time of termination of their services, they were getting Rs.9000.00 per month whereas permanent employees working as cashiers are getting salary of Rs.30,000.00 per month. Job carried out by the workmen herein was perennial in nature and the same should have not been done through contractor, as such, contrary to the provisions of Contract Labour Act, 1970. For the purpose of making payment of salary, management of Ashok Hotel was using services of middleman contractor M/s Recruitment Bureau, who was making payment to the workmen after receiving the said salary from the management of Ashok Hotel every month. It is further alleged that as per Payment of Wages Act, 1948 workmen are entitled to double the wages for extra duty performed by them, which was also denied to the workmen herein. EPF of the workmen herein as per rule of Ashok Hotel should have been deposited in Ashok Hotel Employees Provident Fund Trust No.DL-522, which was not done. Regional Provident Fund Commissioner (North Delhi) cancelled the Ashok Hotel Employees PF Trust No.DL-522 on account of non-deposit of PF money of the employees in the EPF Trust of Ashok Hotel, who were working through contractor, vide letter dated 28.12.2010, which was subsequently restored vide order dated 14.07.2011. Workmen herein were also entitled for bonus as per Bonus Act, 1965 for the financial years working since 2004 but the management of Ashok Hotel paid only Rs.3000.00 once in the entire service of the workmen. Workmen have completed 240 days in each calendar year and thus were entitled for regularization of their services with the management of Ashok Hotel. However, instead of regularizing services of the workmen, their services were illegally terminated in September, 2011. While removing the workmen from service no notice or pay in lieu thereof, nor any service compensation for the service rendered by the workmen was given to them; as such, it violates provisions of Section 25F of the Act.

4. There are also averments that as per Standing Orders of Ashok Hotel under Section No.3 there is a classification of the employees, i.e. Permanent, Temporary, Badlis, casuals, probationers and apprentices and the management of Ashok Hotel cannot use services of employees through contractor and have to employ or appoint employees in the above categories. Workmen were working in the premises of Ashok Hotel, who were beneficiary of their services. As such, they were employees of Ashok Hotel for all purposes.

5. Workmen, further, alleged in para 19 of the claim filed before the Central Labour Commissioner that there was shortage of Rs.860.00 while they were selling coupons in the function held in the Convention Hall on 05.08.2011 and the shortage of Rs.860.00 at the time of coupon sale was deposited by them on 06.08.2011 as per normal practice, though the management did not issue any letter to the workmen for making payment of shortage of amount of Rs.860.00. Management of Ashok Hotel has written letter dated 20.09.2011 to the contractor advising him to direct the workman to deposit Rs.860.00 found short in their cash on 05.08.2011, whereas the workmen, as stated above, had already deposited the amount with management of Ashok Hotel. Thereafter, workmen have also written letter to the General Manager of Ashok Hotel on 24.09.2011 requesting them to take them on duty, but Ashok Hotel has not responded to the said letter so far. President of Ashok Hotel Mazdoor Janta Union wrote two letters i.e. 26.09.2011 and 24.11.2011 but none of these letters were responded by the management of Ashok Hotel. In the end, Workmen have prayed that the management of Ashok Hotel be directed to reinstate both the workmen, Shri Lalit Kumar Vashisht and Shri Bhupender Singh Bhandari with full back wages.

6. Management was put to notice, who filed written statement taking preliminary objections, claiming that the present claim is totally misconceived, ill conceived and not tenable. It is further alleged that the workmen herein were employees of M/s Recruitment Bureau, as such, there is no cause of action against the management of Ashok Hotel. The answering management is neither necessary nor a proper party for adjudication of the claim and name of the answering management should be deleted and substituted with M/s Recruitment Bureau, which is necessary party. Answering management has entered into an agreement with M/s Recruitment Bureau for providing manpower for job works which was on principal to principal basis. Workmen herein were permanent employees of M/s Recruitment Bureau. Liability towards all the relief of the workmen is that of M/s Recruitment Bureau and the answering management has no role in the present dispute.

7. On merits, management has denied most of the averments contained in the statement of claim. It is specifically denied that the workmen herein were working

for the management of Ashok Hotel as they were employees of M/s Recruitment Bureau under whose control and supervision they were working. Workmen during the said period were also charged with offence of misappropriation of public money. It is also denied that attendance of workmen were being marked in I. Card section. Answering management has no rule with regard to marking of attendance of workmen of Recruitment Bureau, who were deployed for rendering service under the contract. Answering management, being principal employer, has no authority to make salary slip of the employees of Recruitment Bureau. Salary bill is raised by the service provider is required to be verified by the concerned officer of Ashok Hotel to establish their authenticity and to ensure compliance of statutory provisions. Averments made in the other paras in relation to deployment, payment of wages, bonus etc. has also been denied by the management. Finally, it has been prayed that this Tribunal may dismiss the claim filed by the workmen herein.

8. Against this factual background, my learned predecessor, on the basis of pleadings of the parties, vide order dated 30.05.2012, framed the following issues:

- (i) Whether the claimants are employees of the management or the contractor?
- (ii) Whether the claimants rendered continuous service of more than 240 days in the preceding 12 months from the date of termination of their services?
- (iii) Whether termination of services of the claimants amount to retrenchment?
- (iv) Whether the claimants are entitled to relief of reinstatement in the services of the management?

9. Workmen, in order to prove their case against the management examined Shri S.S. Upadhyay as WW1, Shri Lalit Kumar Vashishtha as WW2, Shri Bhupender Singh Bhandari as WW3 and Shri Hira Ballab as WW4, who filed affidavits Ex.WW1/A, Ex.WW2/A, Ex.WW3/A and Ex.WW4/A respectively and they have also adduced several documents in evidence and I would be discussing the same while rendering findings in the subsequent paras on various issues.

10. Management, in order to rebut the case of the workmen, examined Shri Lohit Joshi, Manager(HR) as MW1 and also filed affidavit, Ex.MW1/A. He has also tendered in evidence certificate of registration under the Contract Labour Act and copies of bills raised by Recruitment Bureau etc. and the documents are Ex.MW1/1, Ex.MW1/2, Ex.WW4/5 and Ex.WW4/6.

11. I have heard Shri S.S. Upadhyay, authorized representative for the workmen and Shri B.K. Singh, authorized representative for the management.

Findings on Issue No.1 and 2

12. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed of.

13. It is clear from the affidavit filed by Shri S.S. Upadhyay, copy of which is Ex.WW1/A that the same is on similar lines as the averments made in the statement of claim. During the course of arguments, it was not disputed that Ashok Hotel Mazdoor Janta Union is recognized union by the management of Ashok Hotel and there are several cases which have been filed by the workmen through the said union. Admittedly, Ashok Hotel is a public sector undertaking being run by Board of Directors under the Ministry of Tourism. It has its own rules and regulations regarding working of the Hotel. It was also not disputed that Certified Standing Orders modified from time to time are full applicable governing services of the employees working in the said Hotel. During the course of arguments, attention of this Tribunal was invited to Section 3 of the Standing Order, Ex.WW1/1, which deals with the classification of the employees, which clearly provides that all employees of the company shall be classified as under:

- a) Permanent
- b) Temporary
- c) Badlis
- d) Casuals
- e) Probationers

14. Certified standing orders is a complete code so far as services of the employees working in Ashok Hotel is concerned and it contains specific provisions relating to the procedure for dealing with cases of misconduct. The term permanent, temporary, badlis, casuals and probationer workmen has also been fully defined in the said standing orders. It is specifically averred in para 8 of affidavit Ex.WW1/A that the strength of employees approved by the Board of Directors is 1494 in all and employees are appointed in respective categories as per strength of the category. There is also specific mention of the vacant posts and it is specifically alleged that so far as post of cashiers/clerks were concerned, 50 posts of cashiers/clerks were vacant in 2012 against sanctioned post of about 100. Further, management of Ashok Hotel utilizes services of workmen through M/s. Recruitment Bureau. However, supervision and control over the workmen was that of the management of Ashok Hotel. Admittedly, all these workmen were working in the premises of Ashok Hotel. Shri S.S. Upadhyay has admitted that on number of occasions, payment of wages was made when he happened to be present there. Payment of wages was made through M/s. Recruitment Bureau to the workmen. He has further admitted that the workmen were engaged by

M/s. Recruitment Bureau and their services were dispensed with by the said Bureau. He has tendered in evidence duty chart Ex.WW1/14, which shows that the workmen herein used to work in the premises of Ashok Hotel and officials of Ashok Hotel used to mark their attendance. This witness also tendered in evidence document Ex.WW1/5 which shows that management has awarded job contract to the agency mentioned in the said document. There is also letter dated 26.08.2008 Ex.WW1/6 written by Manager, Ashok Hotel to M/s. Recruitment Bureau wherein requirement of 16 candidates has been mentioned to the needful work. There is yet another letter Ex.WW1/7 dated 28.07.2008 which shows that deployment of Shri Satveer Nimesh as Cashier was done by the management of Ashok Hotel. There is an office order Ex.WW1/8 which shows that henceforth no person shall be engaged on contract basis in any of the Division/Unit of ITDC without the approval of the Corporate HR Division. Another letter Ex.WW1/9 addressed by the General Manager to M/s. Sparkling Enterprises shows that the management of Ashok Hotel complained to the contractor that the employees mentioned in the said letter were found to be sleeping during surprise check carried out by officials of the management. Competent authority has directed to take major penalty action against the delinquent employees. This again shows that so far as working of the employees is concerned, supervision and control over them was that of the management of Ashok Hotel and the so called contractor was engaged by the principal employee, i.e. Ashok Hotel was simply a service provider on paper who has forwarded name of workmen for the purpose of deployment in the various units of the Hotel. Ex.WW1/10 shows that surprise check was carried out by officials of the Hotel on the night of 24/25.08.2008 and the workers whose names are mentioned in the said list were found sleeping. Ex.WW1/13 shows list of workmen employed in Ashok Hotel.

15. After termination of the job of the workmen herein, Shri S.S. Upadhyay, President of the Union has written letter to the General Manager, Ashok Hotel, informing the management that cashier, namely Shri Bhupinder Singh Bhandari and Shri Lalit Kumar Vashisht who were working under the management of Ashok Hotel since January, 2006 and 2004 respectively have now been removed from service in an illegal manner. There is also reference to the shortage of cash of Rs.860.00, which amount stands deposited with Ashok Hotel. Similarly, letter Ex.WW1/19 written by Shri S.S. Upadhyay makes reference to his previous letter dated 26.09.2011 Ex.WW1/18 wherein request was made to take the workmen, mentioned in the letter, back with full back wages, failing which matter would be taken to the Court. Letter Ex.WW1/20 shows that matter regarding illegal termination/removal of the workmen was brought to the notice of M/s. Recruitment Bureau, wherein serious allegations have been made against

Shri Bhupinder Singh Bhandari and Shri Lalit Kumar Vashisht regarding concealment/.misappropriation of amount mentioned in the said letter. Both employees have admitted the fact that cash of Rs.860.00 was found short. Thus, it is clear that it is on the basis of these lapses committed by the workmen herein that their services was terminated by the management. However, there is force in the contention of the workmen herein that no such notice before termination or payment of salary in lieu of the notice was made to the workmen before removal or terminating their services.

16. Similar is the statement of Shri Lalit Kumar Vashisht, WW2, whose affidavit is Ex.WW2/A. He has deposed that he was working since 20.11.2011 as cashier. It was the Manager who assigned duty to him as per duty roster. He used to record time of his arrival as well as departure in the attendance register. His attendance was recorded by the Manager. He used to work in shifts and his wages used to be paid through contractor. Photocopy of the ESI card issued to him is Ex.WW2/1. He has not received any notice regarding details for the amount of deposits in his provident fund. He has served under Shri Anil Makkar, who was Manager for about 5 years, Shri K.S. Chaudhary, joined in his post. He also worked under Shri Khanna for about 1 ½ months. He specifically deposed that no termination letter was issued to him. There were regular employees in the Hotel who were doing similar job of cashier. This witness was again cross examined by the management to try and prove photocopy of Identity Card Ex.W2/M2. He has admitted that his wages were paid by M/s. Recruitment Bureau after getting bill passed from the management. He further admitted that the management had not signed any documents with him relating to his service conditions. He has denied other suggestions made by the management.

17. Shri Bhupinder Singh Bhandari was examined as WW3 and his affidavit is Ex.WW3/A. His statement is also on similar lines as that of Shri Lalit Kumar Vashisht. He has admitted that the contractor used to pay wages and he was simply a middleman. No other benefits were granted by the contractor. He rendered continuous service of more than 240 days in every calendar year. No termination order was issued, in writing, by the contractor to him. He has also mentioned the name of the Manager under whom he was working.

18. Workmen also examined Shri Hira Ballabh as WW4 and his affidavit is Ex.WW4/A. Statement of this witness is also on similar lines as that of the other two witnesses. He used to perform his duties in the kitchen. All these workmen were admittedly working in the same hotel.

19. Management, in order to rebut the case of the workmen, examined Shri Lohit Joshi as MW1, whose

affidavit is Ex.MW1/A. He has tendered documents relating to engagement of M/s. Recruitment Bureau Ex./MW1/1 and other documents Ex.MW1/2, E.WW4/4 and Ex.WW4/5. He was posted at Ashok Hotel in October 2012. He has admitted that Certified Standing Orders are applicable to employees of Ashok Hotel. He has admitted the various categories of the employees as mentioned in the said Standing Orders. He further admitted creation of provident fund trust pertaining to employees of Ashok Hotel. He admitted that as per rule 14, Ex.WW1/2, duty is cast on the principal employer to deposit contribution of the provident fund in respect of employees of the contractor in the Trust. He has further deposed that wages were paid to all the employees through M/s. Recruitment Bureau and said employees were working in Ashok Hotel. He has admitted that duty chart Ex.WW1/4 bears signatures of the Bills Manager at point A. To a court question as to why signature of Bills Manager appears at point A, witness sought further time to explain the said fact. He has admitted that Ex.WW1/14 nowhere bears signatures of the contractor. It is clear from perusal of duty chart Ex.WW1/14 that duty chart does not bear signature of the contractor or any of his agent. Bills Manager as signed the same at the end. Thus, there is no force in the contention of the management that it was M/s. Recruitment Bureau who was having overall control on the working as well as supervision over the workmen herein. There is ample evidence on record, as discussed above, to show that above contractor was simply a name lender and the workmen herein were actually working under complete control and supervision of the management of Ashok Hotel. Their placement on duty as well as nature of duty was duly determined by the management from time to time and they were also shifted from one place to another within the premises of Ashok Hotel by the officials of the management so as to get work from them.

20. Now, the primary question which arises for consideration is whether the workmen were in the employment of Ashok Hotel or were employed by M/s. Recruitment Bureau. Equally important is the fact that agreement between the management of Ashok Hotel and the contractor is genuine or simply a sham and camouflage so as to deny status of workmen under the principal employer herein. In this regard, strong reliance was placed by Shri Upadhyay, learned authorized representative appearing on behalf of the workmen upon Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1, wherein the Hon'ble Supreme Court considered extensively various provisions of the Industrial Disputes Act, 1947 as well as Contract Labour Act, 1970 alongwith relevant notification issued under Section 10 of the Contract Labour Act, 1970. A critical appraisal of the above judgement would show that the Hon'ble Apex Court has taken into consideration the

entire spectrum of the case law on the subject and held in para 107 as under:

107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

21. Ratio of the above judgement has been cited with approval in all the subsequent pronouncements by the various High Courts as well as the Hon'ble Supreme Court and while making various conclusions, ratio of the law in *Hussanbhai* case (three judgements decision) was approved and ratio of the judgement in *Air India Statutory Corporation Vs. United Labour Union* (1997) 9 SCC 377 was partly overruled prospectively. It was also made clear that neither Section 10 of the Contract Labour Act nor any other provisions under the Act, whether expressly or by necessary implication provides for automatic absorption of the contract labour on issuance of notification by the appropriate Government under sub-section 1 of Section 10 prohibiting employment of contract labour in any process, operation or other work in any establishment. Matter is to be decided judiciously by the Industrial Adjudicator where a contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for the work of the establishment under a genuine contract or is merely a ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will be treated as employees of the principal employer who shall be directed to regularize services of the contract labour in the establishment concerned, subject

to the conditions as may be specified by it for that purpose in the light of para 6 hereunder:

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

22. This Tribunal has to keep one thing in mind that the Industrial Disputes Act as well as Contract Labour Act. Essential and beneficial legislation of the scheme of the Contract Labour Act 1970 is to regulate conditions of workers under the contract labour system and to provide for its abolition by the appropriate Government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of provisions of the Act punishable there-under. There is also requirement for the principal employer of the establishment to get itself registered under the Act so as to avail the benefit of provisions of the Act.

23. Reliance was also placed upon the case of *Management of Ashok Hotel vs Their Workmen* decided on 19.02.2013 in WP(C) No.14828/2006 wherein similar question was involved. It was a case where various workmen were working continuously as safaiwala/ Housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who has entered into a contract with the principal employer, i.e. Ashok Hotel. Strong reliance was placed on behalf of the workmen upon ratio of the case in *Steel Authority of India* (supra) and contention of the management to the effect that workmen were employees of the contractor was rejected. Further, contract in the said case was also held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

24. Lastly, reliance was placed upon the case of *J. Elangovan vs. CGIT cum Labour Court Chennai* decided on 13.12.2010 wherein workmen who were engaged as lift operators through contractor by the principal employer, i.e. Airport Authority of India, were held to be employees

of the contractor by the Industrial Tribunal and an appeal against the same was filed before the Hon'ble High Court wherein same plea was taken as in the case in hand that the workmen were getting salary through contractor and were not engaged by the principal employer, who was not having any effective control over them. However, this plea was rejected by the Hon'ble High Court by heavily relying upon the ratio of the case of Hussain Bhai Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode & others (1978 4 SCC 257), Catering Cleaners of Southern Railway Vs. Union of India and another (1987 1 SCC 700), Silver Jubilee Tailoring House and others vs. Chief Inspector of Shops and Establishments and another (1974 (3) SCC 498, Mishra Chatu Nigam Ltd. and others V.M. Venkataiah and others (2003 7 SCC 488), Sankar Mukherjee and others vs. Union of India and others ((1990(Supp.) SCC 668 and Ram Singh and others Vs. Union Territory Chandigarh & others (2004 1 SCC 126). It was also observed that the test for determining as to whether workers hired through contractor can be treated as employees of the principal employer rests on the nature of the activity entrusted. Where nature of work entrusted to the contract workers are integral part of the activity of the management and intervention of intermediary or contractor, absence of direct relationship between worker and principal employer, including control by the principal employer, payment of salary by the contractor and maintenance of attendance register by the contractor are not of any consequence, particularly more so when the nature of job entrusted to such contract workers is the same as one done by regular employees. Agreement in the said case was held to be sham and camouflage. Situation in the case in hand is in no way different. It is clear from evidence on record that workmen herein were being paid salary by the contractor through officials of Ashok Hotel. Work of cashier, as per statement of MW1 is regular and perennial in nature. It is further clear that contract Ex.WW4/3 was awarded to M/s. Recruitment Bureau initially for a period of three years and he has simply provided workforce to Ashok Hotel, whose officials were supervising and were having effective control over working of such employees. Further, job of cashier is very delicate and is in fact being performed by regular employees of Ashok Hotel also. As a result of the discussions above and in the light of the ratio of decisions in the above judgements coupled with evidence on record, contract Ex.WW4/3 in the case is held to be sham and a mere camouflage so as to deny relationship of employer (Ashok Hotel) and workmen herein.

25. It is further clear from the critical appraisal of the above judgements that services of the workman is taken in connection with the work of the establishment, by the principal employer through contractor, in that eventuality, contractor merely acts as an agent or a broker on behalf of the principal employer and the workman in such a situation

would continue to be a direct employee of the principal employer and not that of the agent or the broker. In the case in hand also, it is clear from the evidence on record, that the workmen herein were admittedly working as Cashiers with the management regularly, though alleged to be in the employment of M/s. Recruitment Bureau. Supervisory control upon them remained with that of the management.

26. It is also clear from perusal of the Certified Standing Orders Ex.WW1/1 that Section III details with the classification of employees and the same is reproduced as under:

Section 3 : Classification of Employees

- a) Permanent
- b) Temporary
- c) Badlis
- d) Casuals
- e) Probationers

27. Since appointment of contract labour is not contemplated in the above Certified Standing Orders, as such, the engagement of workmen through contract labour is patently against the law and Standing Orders Ex.WW1/1.

28. Workmen have also filed documents Ex.WW1/2 which deals with the deposit of provident fund of the employees engaged by the employer. Similarly, document Ex.WW1/3 shows that contractor or the employer was not depositing the provident fund etc. with the Trust so constituted under the Regulation, as a result of which exemption granted to the management was withdrawn by the Regional Provident Fund Commissioner Delhi, North. There is another document, Ex.WW1/4, which shows the position of employees who were working in the establishment of the management. During the course of arguments, it was not disputed that several posts of various categories are lying vacant in the establishment of the management and have not been filled up so far as the Central Government has not granted permission to fill up the same. In such a situation, one thing is crystal clear that though the work of the workmen herein who were admittedly working as Cashiers with the management is regular in nature, yet the management is deploying workers through contractors.. It is further clear that management has adopted this device so as to deprive the workmen of regular employment and deprive them of their permanent livelihood, which is totally against the spirit of Contract Labour Act, 1970 wherein it is clearly provided that when a work is regular or permanent in nature, there is no question of employing contract labour, particular when such labour is not covered by any clause mentioned in Section III of the Certified Standing Order. This also amount to unfair labour practice.

29. Admittedly, no notice whatsoever was served upon the workmen herein before ordering their termination, as they have been working since July 2004 and January 2006. Thus, in the case in hand, there is violation of Section 25F of the Act, which requires that if a workman has worked continuously for 240 days in a calendar year, then the management is required to issue notice to such workman, which has not been done in the case in hand. Thus, there is no merit in the contention of the management that the workmen herein were directly employed by M/s. Recruitment Bureau. when the overall control and supervision remained with the management.

30. So far as question of regularization of the workmen herein is concerned, this Tribunal cannot give directions for regularization of the workmen in view of the clear cut ratio of law in Steel Authority of India (supra) wherein it was held that question of regularization is to be decided by the principal employer after taking into consideration the minimum qualification, age as well as availability of posts. There is no such evidence to this effect brought on record, either by the workmen or the management. As such, plea of the workmen for regularization cannot be entertained at this stage. This is to be decided by the management after taking into consideration the necessary rules applicable to such employees governing such regulation.

Findings on Issue No. (iii) & (iv)

31. During the course of arguments, it was strongly urged on behalf of the management that M/s. Recruitment Bureau was a necessary party to the controversy and in the absence of its impleadment as a necessary party, reference filed by the workmen herein is not legally maintainable. Shri Upadhyay, authorized representative on behalf of the workmen countered the above submissions by urging that the workmen herein were in the employment of the management and that payment of wages were made to them through contractor with the prior approval of the management, as such M/s. Recruitment Bureau is not a necessary party. To my mind, when reference has been made under Section 10 of the Act by the appropriate Government, this Tribunal does not have the power to implead a party. Hence, there is no force in the contention of the management inasmuch as the management should have examined the contractor M/s. Recruitment Bureau so as to ascertain its terms and conditions. Moreover, M/s Recruitment Bureau is simply a proper party and is not the necessary party for the adjudication of the controversy in question. Hence, this issue is answered accordingly.

Relief

32. Consequently, it is held that termination of the workmen herein, i.e. from 20.09.2011 is held to be illegal

and workmen herein are entitled to be reinstated. Since it has come in the evidence of the workmen that they are unemployed since the date of their termination and there being no evidence to the contrary led by the management, as such, the workmen herein are liable to be reinstated with full back wages from the date of their termination. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 29, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2016

का.आ. 637.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आई.बी. पी. कंपनी लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 06/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-30011/26/2007-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th April, 2016

S.O. 637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2007) of the Industrial Tribunal/Labour Court, Pune now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. IBP Company Ltd. and Other and their workman, which was received by the Central Government on 31-03-2016.

[No. L-30011/26/2007-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE

Reference (IT) No. 06/2007

1. The Senior Divisional Manager,
IBP Co. Ltd., Pune Divisional Office,
4, Aditi Commerce Centre, 5th Floor,
2406 East Street, Pune-1.
2. Indian Oil Corporation Ltd.,
Loni, Tal-Haveli, Pune. ...First Party

AND

Shri Shivlingappa H. Roli,
Atre Vasti, Loni Station,
Pune-Solapur Road, Pune ...Second Party

CORAM : Shri. A.M. Tamboli, Presiding Officer

Appearances :

Mr. D.V. Kulkarni, Advocate for First Party

Mr. Gopale, Advocate for Second Party

AWARD

(Dated :11.03.2016)

The Government of India, Ministry of Labour, has made this reference for the adjudication of the dispute between Shri. Shivlingappa H. Roli (the Second Party), and Senior Divisional Manager, IBP Co. Ltd., (the First Party employer). The dispute is regarding termination of services of the Second Party.

2. It is the case of the second party workman that, he was employed by the first party after he was interviewed, as a helper in 1990, on monthly wages of Rs.6000/-. The first party is engaged in the business of distribution of petroleum products. It is the case of the second party that, during his employment he was not getting wages and other benefits such as leaves, and therefore, he had made a request to the first party to give him the said benefits, and therefore, the first party got annoyed and due to the same the Manager of the first party started harassing him. It is also alleged that, the second party while on duty over a tanker owned by the first party as a cleaner met with an accident and suffered injuries, but no compensation was paid by the first party to him. On the contrary on the very day the first party removed him from the services orally without complying with the provisions of law.

3. It is also alleged by the second party that, during his period of employment he has worked continuously for more than 240 days in a year. Despite this, he was not given the benefits of permanent employees, and the first party want to deprive him of the said benefits, and therefore, he has claimed for reinstatement with continuity of service and full back wages. It is also contended by the second party that, after he was removed by the first party, he has tried to secure another employment, but could not get any employment.

4. The first party filed its written statement and denied all the allegations made by the second party workman. It is stated that, the first party comes directly under the Ministry of Natural Gas & Petroleum, and rules and regulations framed by the government in respect of recruitment are binding on the first party.

5. It is also stated that, the first party no.1 merged with first party no.2 w.e.f. 02.05.2007, and therefore the first party no.1 is not in existence. It is also stated by the first party that, the second party was engaged by the erstwhile company (which is now not in existence) as a casual labourer during September 1994 to May 2000, whenever there was need of casual labourer. It is also stated that, during all these years from 1994 till 2000, the second party workman did not work for 240 days in any year as alleged

by him. It is stated that in the year 1994 he worked hardly for 26 days; in the year 1995 he worked for 79 days; in the year 1996 he worked for 110 days; in the year 1997 he worked for 100 days; in the year 1998 he worked for 118 days; in the year 1999 he worked for 44 days; and in the year 2000 he worked for 40 days. Thus, according to the first party the second party did not work for 240 days in any year as alleged by him. It is also stated that, the second party is not appointed as an employee as per the rules. It is stated that, it is the attempt of the second party to have a back-door entry.

6. It is stated that after Lorry No.MH-12 AQ-825 met with an accident, the first party disposed of the said lorry and there was no need of cleaner (casual labourer) for the said lorry. Similarly, it is stated that after the merger of first party no.1 and first party No.2, the first party employer has changed its policy and has decided not to have their own lorries, and as such No work is available with the first party of a casual labourer to provide to the second party workman. It is denied by the first party that, any casual labourers who were junior to the second party were confirmed in the employment of the first party.

7. It is stated that, after the second party met with an accident, the first party provided him medical treatment in a reputed hospital simply on humanitarian grounds. In a nutshell, it is stated that the second party workman is not entitled for the benefits of permanency with continuity of service and back wages, and therefore the first party prayed for rejection of the claim made by the second party.

8. Upon the rival pleadings of the parties, my Ld. Predecessor Shri K.W. Thakare, the then Member of this Tribunal, has framed the following issues on 21.01.2011, and I have given my findings against each of them for the reasons mentioned below:-

| ISSUES | FINDINGS |
|--|---------------------|
| 1 Does the second party workman prove that he had been in the continuous employment of the first party since 1990 as a helper on the last drawn monthly salary of Rs.600/- up to 27.5.2000 and completed 240 days continuous service in a calendar year? | No; |
| 2 Does the second party prove that, his services were orally terminated by the first party w.e.f. 27.5.2000 and termination of his services is unjustified & without following due process of law? | No; |
| 3 Does the second party prove that he is entitled to the relief of reinstatement with continuity of service and full back wages with attendant benefits? | No; |
| 4 What award/order? | As per final award. |

REASONS

9. In order to prove his case, the second party workman has given his oral evidence and closed his evidence. Similarly, the first party has examined Shri Pravin Shrivastva and closed their evidence.

10. Before starting discussion as to issues above, it is worth to mention that, this reference was decided by this Tribunal on 17.07.2013 ex-parte, and the first party had challenged the said award passed by this Tribunal before the Hon'ble High Court by filing W.P. No.10178/14. In the said writ petition Her Ladyship Justice Smt. R.P. Sondur Baldota, passed orders on 15.07.2015 and thereby set aside the order passed by the Industrial Tribunal dated 17.07.2013, and ordered to give an opportunity to the first party to establish their claim i.e. the second party workman did not work for 240 days in any year as contended by him. Under the circumstances, the reference was remanded back before the court for rehearing, and accordingly the parties have lead their evidence as mentioned above.

11. **As to Issue No.1 :** According to the second party workman, he has worked with the first party from 1990 till 27.05.2000 as a cleaner over a lorry bearing No.MH-12 AQ-825, and the said lorry met with an accident on 27.05.2000 and the driver of the said lorry died in the said accident, and on the very day his services were terminated by the first party orally. But, prior to that he was working with the first party from 1990 and in every year he has completed 240 days of service. Infact, in support of his contentions besides his bare words nothing is brought on record by the second party. It was possible for him to produce his salary slips and/or examine any co-workers to show that he has infact worked for more than 240 days in every year. Thus no positive evidence has been produced by the second party to establish his claim.

12. During the course of arguments, the learned Advocate for the second party has submitted that, he has given a notice to the first party calling upon the first party to produce on record the muster-roll and other relevant documents which will throw light over the controversy and it would be glaring by the said documents as to whether the said second party has worked for 240 days in any year. However, the first party did not produce the said documents. Consequently, according to the second party adverse inference is necessary to be drawn. As regards this submission of the second party, the first party has attracted my attention towards the observations of His Lordship Justice R.M.S. Khandeparkar, of our Hon'ble High Court in the case of chief Executive Officer, Zilla Parishad V/s. Shahezadbee & Anr., reported in 2002-(94)-FLR-479. In the said cited case also, the employer was directed to produce the muster roll for the relevant period, but the employer had failed to produce the same, and therefore, Labour Court has drawn adverse inference as regards employment of the employee in the said matter,

and has held that employee has rendered services for the period of more than 240 days in the year preceding to her termination. No doubt, that in the present case also such a notice to produce documents were given, however, according to the first party at the relevant time first party No.1 was in picture which was subsequently merged with the first party No.2, but the first party No.1 did not hand over any such documents to the first party No.2, consequently, they cannot produce the same. Thus, the reasonable explanation is forth coming from the first party as to why they could not produced the said muster-rolls. However, the witness of the first party has produce on record a copy of internal correspondence of the company over which he could lay his hands i.e. letter dated 20.11.2000 which is at Exh.C-15. Infact, in view of the provisions under Section-32(2) of the Evidence Act, it is a relevant fact, and therefore the said letter can be taken into consideration. In the said letter it has been mentioned that the second party did not work with the first party for 240 days in any year. Infact the break-up of month wise work done by the second party has been mentioned in the said letter commencing from September 1994 to May 2000, and in the break-up there is nothing to infer that in any particular year he has worked for more than 240 days in any year.

13. It is also pertinent to note that, it is clearly mentioned that he was not employed as a permanent employee. He was called to work as a casual labourer whenever the company's cleaners were going on leave. Thus, it is clear that he was given job in the first party company on leave vacancy, and thus it is clear that his employment was not on a permanent vacant post nor he had worked for 240 days in any year.

In the above cited case our Hon'ble High Court has observed that, under the circumstances this attempt of an employee to have a backdoor entry which cannot be allowed. Consequently, I am of the opinion that it is clear that, the second party workman failed to prove that he has worked for more than 240 days in any year from 1990 to 2000. Hence I answer this Issue in the negative.

14. **Issue No. 2 :** According to the second party his services were terminated by the first party w.e.f. 27.05.2000, and his such a termination without payment of compensation as provided under the I.D. Act is unjustified. During the course of arguments, the learned Advocate for the second party has submitted that, since the second party was in a permanent employment of the first party when his services were terminated, the first party ought to have given him retrenchment benefits. Thus, it appears that, according to the second party he has been retrenched by the first party. In a definition of retrenchment given U/s. 2(oo) of the Industrial Disputes Act, a person whose services have been terminated for non-renewal of contract of employment is excluded. In the present case, it is clear that, the second party did not work 240 days in any particular year, and he was being appointed as a casual

labourer on leave vacancy, and thus on given date i.e. on 27.05.2000 his services came to an end for non renewal of the contract, and he was not terminated and thus he was not entitled to be called as retrenched workman within the meaning of I.D. Act. Consequently, his termination cannot be said to be unjustified. Hence I answer this Issue in the negative.

15. **Issue No. 3 :** According to the second party, he is entitled for reinstatement with continuity of service and full back wages and other relevant benefits. As discussed above, he is not in permanent employment of the first party, his services came to an end due to lapse of contract of casual labourer, and therefore, he is not entitled for reinstatement with continuity of service. Similarly, when he is not entitled for the reinstatement, he is not entitled for back wages also. Hence I answer this Issue in the negative.

16. **Issue No. 4 :** In view of my above discussion, and in consequence of my findings as to Issue No.1, 2 & 3, I am of the opinion that as the Reference is made by the appropriate government raising question as to whether the action of the first party terminating the services of the second party without giving any notice is legal and justified, I am of the opinion that the reference is to be answered in the affirmative i.e. to say that the termination of the second party is legal and justified. Hence I propose to pass the following award.

AWARD

1. The reference is answered in the affirmative, i.e. the action on the part of the first party terminating the services of the second party is legal & justified.
2. No orders as to cost.

Pune:

Dated: 11.03.2016

A. M. TAMBOLI, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2016

का.आ. 638.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई इस्पात संयंत्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 62/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-26012/5/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th April, 2016

S.O. 638.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 62/2015) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and their workman, which was received by the Central Government on 31-03-2016.

[No. L-26012/5/2015-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/62/2015

Shri Kuldeep Singh and 601 Others,
Technical Apprentice (Batch 68 to 75),
R/o House No. 276, Street No.4,
Shanti Nagar, Bhilai
Distt. Durg (CG).

...Workman

Versus

Chief Executive Officer,
Bhilai Steel Plant,
Bhilai, Distt. Durg (CG)

...Management

AWARD

Passed on this 10th day of March, 2016

1. As per letter dated 19-2-2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-26012/5/2015-IR(M). The dispute under reference relates to:

“Whether the action of the management of Bhilai Steel Plant in publishing the advertisement of the recruitment of Technical Apprentices ignoring the preference of the Technical Apprentice batch 68 to 75 against the order of the Supreme Court of India is justified? If not, as to what relief these workmen should get?”

2. After receiving reference, notices were issued to the parties. Workman submitted not to submit statement of claim on 10-2-2016. Management also desire to file Written Statement. Parties donot participate in reference proceeding. However Ist party submitted application that as complaint A/1/2015 is filed covering both advertisement dated 28-12-2014 and 5-8-2015. Present case ought to have merged with R/62/2015 as it doesnot cover advertisement dated 5-8-2015. The application for merger was not accepted. As both parties failed to participate in present reference. The dispute under reference could not be adjudicated on merit. As the workman requested for withdrawal, the reference stands disposed off.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 अप्रैल 2016

का.आ. 639.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई इस्पात संयंत्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 91/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-26012/3/2009-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th April, 2016

S.O. 639.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2009) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and their workman, which was received by the Central Government on 31-03-2016.

[No. L-26012/3/2009-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/91/09

The President,
Metal Mines Workers Union (INTUC),
Dallirajhara, 26/B, W Type,
Durg (CH) ...Workman/Union

Versus

Assistant General Manager (P Minhes & ES),
Bhilai Steel Plant,
Bhilai ...Management

AWARD

Passed on this 16th day of March, 2016

1. As per letter dated 22-10-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-26012/3/2009-IR(M). The dispute under reference relates to:

“Whether the management of Bhilai Steel Plant in Dalli Manual Mines, Dallirajhara is justified in changing the date of birth of Shri A.R. Dewangan, P.No. 856069 from 1-4-49 to 1-8-49 without considering date of birth of Shri A.R. Dewangan as

21-11-1950 as mentioned in his marksheet of the High School Certificate Examination of Board of Secondary Education, MP Bhopal? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim on 27-2-2010. Case of 1st party workman is that he was initially engaged through contractor on 1-8-74. On 24-5-96, he was posted as DPR Labour. Workman has retired from post of ATC from Dalli Manual Mine. Workman was earlier engaged orally by the contractor on 1-8-94. Contractor had not called any documents regarding his qualification. While workman was working as DPR, on temporary basis from 31-5-86, he was appointed as DPR Skilled from 31-5-96. Management did not call any documents relating to his qualification.

3. In 2007, workman inspected his service record and came to know that his date of birth was wrongly recorded 1-4-49 instead of 21-11-90. That he has passed 11th class Higher Secondary Examination in 1968. In his marksheet, his date of birth was recorded 21-11-1950. Workman had submitted representation alongwith higher secondary examination certificate. Workman reiterates that management without verifying the documents submitted by him, his date of birth was corrected from 1-4-49 to 1-8-49 vide order dated 1-3-08. His date of birth was corrected as such without any basis. His date of birth should have been corrected 21-11-1950 as per the certificate. Workman was retired prematurely on 31-7-2009. The act of management is alleged to be unfair labour practice and victimization.

4. 2nd party filed Written Statement on 23-2-2011 opposing claim of workman. Workman joined as contractual labour on 1-8-74 after departmentalization on 31-5-86. Workman declared his date of birth as 1-4-49. Prior to departmentalization, workman had filled up medical examination form on 25-2-96 recorded his date of birth as 1-4-49. Workman also shown his same date of birth at first page of service book, attestation form, CPF form etc.

5. In the year 2007, workman prayed for correction of date of birth from 1-4-49 to 21-11-90. His request was not considered as workman is educated person and he failed to submit documents about his date of birth at the time of his appointment as DPR. The onus of producing documents was on the workman. As per circular dated 10-4-07, if there is conflict between date of birth declared by workman in earlier B Form and date of birth declared subsequently, the earlier document relating to his date of birth is to be accepted. The date of birth declared by workman on 1-8-74 is to be considered as final. However as age of workman was shown 25 years on 1-8-74, his date of birth was corrected to 1-8-49 instead of 1-4-49. Above contentions are reiterated by 2nd party. Workman himself shown his date of birth 1-4-49 in medical examination form,

service book attestation form, CPF nomination, LTC application etc. it is reiterated that correction of his date of birth was properly made by 2nd party considering his age shown in Form B Register of 1974. 2nd party prays for reference be answered in its favour.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the management of Bhilai Steel Plant in Dalli Manual Mines, Dallirajhara is justified in changing the date of birth of Shri A.R. Dewangan, P.No. 856069 from 1-4-49 to 1-8-49 without considering date of birth of Shri A.R. Dewangan as 21-11-1950 as mentioned in his marksheet of the High School Certificate Examination of Board of Secondary Education, MP Bhopal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. Workman did not file evidence. His evidence was closed on 10-3-2015. However documents produced by management are admitted. Exhibit M-1 is the form for medical examination., his date of birth is shown 1-4-49. In Exhibit M-2 to M-4, date of birth of workman is shown. In Exhibit M-2 educational qualification of workman is shown HSc passed in 1968 in 3rd Division. Said form was submitted on 5-2-98. Exhibit M-5 is copy of guidelines regarding determination of date of birth.

Para 2 Clause iv provides – In cases where documentary evidenced in support of date of birth is not available as per Sl.No.(iii) Date of birth shall be determined as per the certificate of Medical Examination by the Medical Board. Whereever the Medical Board certifies a particular age in respect of an employee, the date of birth shall be arrived at after deducting the number of years representing his her age from the date of his her medical examination. Illustration has been given.

Para 3 clause ii provides no change in date of birth shall be allowed if such requests are received from employees during the last five years of their service for any reason whatsoever,

Clause iii provides – if age/ date of birth has already been declared by the employee at the time of appointment as per the matriculation/ 10th Board Certificate School Leaving Certificate issued by the Competent Authority of the Board or school, the same shall be as final and no more change will be allowed at a subsequent stage.

Clause viii provides- if no document regarding date of birth is available in any personal records of the employee, he may be communicated in writing that there are no records/ documents of your date of birth available in your personal records and hence you are directed to appear before the Medical Board for determination of age.

The pleadings and evidence of 2nd party are silent that Ist party workman was referred for medical examination for determination of his age. Workman had submitted representation for correction of his date of birth as per the entry in School Certificate as 21-11-1950.

8. His representation was not rejected on the ground that correction of date of birth could not be changed during last 5 years of his service as per clause 3(ii). The correction of date of birth was allowed by the management. Considering his age show in Form B submitted on 1-8-74, claim of Ist party workman for correction of his date of birth as per his date of birth shown in the marksheet was rejected only on the ground that he was a educated person. Educational qualification of workman was show long back on 5-2-82. Management did not issue notice for production of documents neither he was referred for medical examination. Correcting date of birth of workman as recorded in Form B Register on 1-8-74 therefore cannot be said proper.

9. The cross examination of management's witness shows that his date of birth was shown 1-8-49 in Form B at the time of joining service. Management's witness denies that on 31-5-96, when workman joined service under Bhilai Steel Plant, he was given opportunity to produce documents of his educational qualification. The date of birth of workman was corrected as per Exhibit M-6. Documents submitted by workman were considered. Those documents are not produced. Exhibit M-6 shows that date of birth of workman was corrected to 1-8-49. Management did not consider date of birth of workman recorded in marksheet of HSc 21-11-1950. Therefore the action of 2nd party cannot be justified. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in point no.1, 2nd party is directed to correct date of birth of workman as 21-11-1950. Workman has prematurely retired, workman deserves payment of salary for the period 2-8-09 to 21-11-90.

11. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2nd party is directed to correct date of birth of workman 21-11-1950 recorded in marksheet of HSc. 2nd party is directed to pay salary for the period of premature retirement treating his date of birth as 21-11-1950.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2016

का.आ. 640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत अल्युमीनियम कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 136/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-43011/21/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th April, 2016

S.O. 640.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 136/2012) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Aluminium Company Ltd. (BALCO) and their workman, which was received by the Central Government on 31-03-2016.

[No. L-43011/21/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/136/2012

General Secretary,
Bharat Aluminum Mazdoor Sangh
Post Balco Nagar, Korba (CG) ...Workman/Union

Versus

Chief Executive Officer,
Balco, Post Balco Nagar,
Korba ...Management

AWARD

Passed on this 17th day of March 2016

1. As per letter dated 29-11-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-43011/21/2012-IR(M). The dispute under reference relates to:

“Whether the action of the management of Chief Executive Officer⁴, BALCO, Korba in change of designation as Assistant Manager of Shri Chhedi Shahi Sr. Technical Officer (Mining), Mainpat Bauxite Mines of Balco without changing his service conditions under Section 9-A of the Industrial Disputes Act 1947 is legal and justified? What relief the workman is entitled to and from which date?”

2. After receiving reference, notices were issued to the parties. Despite of repeated notices, workman failed to appear, he was proceeded exparte as per order dated 13-8-2014.

3. Management filed exparte Written Statement. As per pleadings in Written Statement dispute was raised by workman about change of service conditions in violation of Section 9-A of ID Act. That as per settlement dated 15-5-93, it was alleged management has suddenly changed his designation as Assistant Manager which is contrary to the agreement of 1993 is illegal. The Union also agitated some technical officers have already been objected for illegal change in their designation. The contentions of Union were opposed by management. The ground that others have been promoted having policy of promotion, workman being an executive is governed by promotion policy applicable to the executives. Management promoted employees as per promotion policy of 2005 and not promoted as per policy of 1993. The revised cadre was framed in January 2005,. Workman was executive of the company. The rationalization of designation of the executive is not an industrial dispute. The executive of company is covered by provisions of Balco Conduct, Discipline and Appeal Rules 1975. The revised line of promotion chart illustrating career growth opportunities for BALCO workman as agreed on 5-1-2005 which clearly indicates that workman have career growth upto wage Category X. He was promoted from Technical Officer to Sr. Technical Officer which was in accordance to the executive promotion policy and not in accordance to the policy referred by the Union of 1993. Bharat Aluminium Mazdoor Sangh cannot take up issue in respect of the applicant as he is an executive of the company. 2nd party submits that looking to the facts and circumstances, workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief Executive Officer, BALCO, Korba in change of designation as Assistant Manager of Shri Chhedi Shahi Sr. Technical Officer (Mining), Mainpat Bauxite In Affirmative

Mines of BALCO without changing his service conditions under Section 9-A of the Industrial Disputes Act 1947 is legal and justified?

(ii) If not, what relief the workman is entitled to?"

Workman is not entitled to any reliefs.

REASONS

5. Workman failed to participate in present reference. No statement of claim is filed by workman. Management filed ex parte Written Statement. Affidavit of evidence of witness Shri T.P.Jerald is filed supporting contentions of 2nd party in Written Statement. From evidence of management's witness, documents Exhibit M-1 to M-11 are proved. As no statement of claim is filed by Ist party workman, neither participated in reference proceeding, any kind of illegality in change of designation of workman as Assistant Manager is not established. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2016

का.आ. 641.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बोकारो इस्पात संयंत्र (सेल) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 13/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-43012/6/2011-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th April, 2016

S.O. 641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bokaro Steel Plant (SAIL) and their workman, which was received by the Central Government on 31-03-2016.

[No. L-43012/6/2011-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of a reference u/s 10 (1) (d) (2A) of I.D. Act, 1947

Ref. No. 13 of 2012

Employers in relation to the management of Bokaro Steel Plant (SAIL)

AND

Their workmen

Present :

Sri Ranjan Kumar Saran, Presiding officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri Pintu Mondal, Rep.

State : Jharkhand

Industry : Steel

Dated 17/03/2016

AWARD

By Order No. L-43012/6/2011 -IR (M), dt. 19/01/2012, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the of Bokaro Steel Plant, SAIL in Superannuating Shri H.R.Mahato w.e.f 31/01/2010 in place of 31/12/2010 as claimed by the workman is justified? If not, to what relief the workman is entitled to?"

2. The case is received from the Ministry of Labour on 06.02.2012. After notice, both parties appeared. The workman files their written statement on 14.06.2012, The management files written statement on 12.04.2013. Thereafter rejoinder and documents filed by the respective parties. One witness examined from each side as well as document of management marked as M-1 to M-4.

3. The case of the workman is that the workman was displaced person, he was appointed by the management of Bokaro Steel Plant, SAIL as displaced on 04.12.1972 . He was uneducated workman so all forms namely personal Date, Attestation Form, Marriage Declaration Form, Recruitment particulars etc are used to have been filed by the Departmental Officials of the company. Since then all the above forms remained under the custody, control and possession of the management.

4. It is submitted by the workman that the workman declared his age 22 years on 04.12.1972 i.e on the date of his joining in the services therefore the date of birth of the workman comes to 4.12.1950 and it was accepted by the employer as such he is to be retired on 31.12.2010 on attaining the age of 60 years. But he has been wrongfully retired on 31.01.2010 by the management. That means it is premature retirement. Moreover provision 25 F of the I.D Act is not complied. It is further submitted by the workman that the service condition of the workman are governed by the certified standing order of the company. But it is not followed by the management.

5. The case of the management is that the workman concerned was superannuated from the service of the Bokaro Steel Plant on 31.01.2010 on attaining the age of 60 years. After superannuation the workman raised an industrial dispute in individual capacity vide his application dated 07.03.2011 before the R.L.C @ Dhanbad. A Superannuated employee does not come under the definition of the workman and that being the position he has no right to raise an Industrial dispute under section 2A of the I.D.Act 1947.

6. It is also submitted by the management that, at the time of appointment the workman concerned submitted particulars of his own interview for the post of Khalasi of 27.06.1972 mentioning his date of birth as 15.01.1950. he was also submitted attestation form mentioning the date of birth as 15.01.1950 as well as personal bio-data form and issuance of medical book.

7. It is further stated by the management that the date of birth/age filed in personal data form has been reckoned and considered for all practical purpose like pension, PF, Gratuity, nomination and superannuation etc. Hence the workman concerned superannuated from the service of the company according to the provision of certified standing order on reaching the age of superannuation, i.e. legal and justified.

8. The short point to be decided in the case is as to whether the workman has been retired prematurely though he had some more days to work or not.

9. The management counsel solely relied upon the Form "B" register as well as attestation form and all other document which was filed at the earliest stage signed and authenticated by the workman. The management also kept that on record. But the workman filing some stray document has claimed that he was retired prematurely.

10. The workman examined as ww-1, has says in cross examination that "I filed the case after retirement".

11. The workman raised the claim after retirement and at the fag end of his carrier. The belated claim is always after thought and as such this Tribunal did not attach any importance on it.

12. In this contains very much matrial of this judgement is as below:

As per civil appeal No.2331 of 2004 page 279 in which — Court to be circumspect,cautions and careful while issuing direction for correction in date of Birth of a Govt. servant — particularly at the fag end of his carrier or on the eve of his superannuation — Employee cannot claim as a matter of right for correction in his date of birth even if has good evidence

13. Considering the facts and circumstances of this case, I hold that the action of the management of Bokaro Steel Plant, SAIL in Superannuating Shri H.R.Mahato w.e.f 31/01/2010 in place of 31/12/2010 as claimed by the workman is justified. Hence he is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2016

का.आ. 642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सलेम इस्पात संयंत्र (सेल) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 86/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2016 को प्राप्त हुआ था।

[सं. एल-26011/9/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th April, 2016

S.O. 642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Salem Steel Plant (SAIL) and their workman, which was received by the Central Government on 31-03-2016.

[No. L-26011/9/2015-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 16th March, 2016

Present :

K. P. PRASANNAKUMARI, Presiding Officer

Industrial Dispute No. 86/2015

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Salem Steel Plant and their workman]

BETWEEN:

The General Secretary : 1st Party/Petitioner
Steel Plant Employees Union Union
C-27/1, Mohan Nagar
Salem-636030

AND

The General Manager (P&A) : 2nd Party/Respondent
Steel Authority of India Ltd.
Salem Steel Plant
Salem-636013

Appearance :

For the 1st Party/ : Mr. K. P. Suresh Kumar,
Petitioner Union Authorized Representative
For the 2nd Party/ : Sri Jagdish Prasad, Authorized
Respondent Representative

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No.L-26011/9/2015-IR (M) dated 04.06.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Sail, Salem regarding the withdrawal of existing facility of Homeo and Ayurvedic Medical Treatment to employees is justified or not? If not, to what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 86/2015 and issued notices to both sides. The petitioner has appeared in person and the Respondent through its Authorized Representative and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner are as below:

The employees of the Respondent establishment were availing medical facilities of allopathic treatment as well as the alternate methods of treatments like Homeo, Ayurvedic, Siddha, etc. even from the project stage of the plant till 12.02.2012. The Respondent has issued a circular on 13.02.2012 denying the facility of reimbursement of expenses incurred on Homeo, Ayurvedic and other Alternate Treatment to the employees. An order may be passed directing the Respondent to restore Homeo,

Ayurvedic and other alternate medicine facility to the workers of the establishment.

4. The Respondent has filed Counter Statement contending as below:

The Respondent is engaged in manufacturing and fabricating iron and steel products like cold rolling stainless steel, hot rolling stainless steel, etc. The Respondent has its own medical policy to provide comprehensive healthcare to their employees and their dependents and to provide healthcare facility to retired employees. The Respondent is maintaining a hospital with 40 beds to achieve this objective. The SAIL Medical Attendance Rules are applicable to all the employees. The Respondent has a liberal policy for providing free medical treatment to all the employees as well as its dependents. When the company has its own hospital for treatment, reimbursement for expenses incurred by treatment through alternate methods of medicine like Homeopathy, Ayurveda, Siddha, Unani, etc. are not allowed. When the Respondent plant was in the process of setting up its own hospital the system of availing treatment by the employees on their own arrangement had been allowed and some of the employees have been availing homeopathy and ayurvedic treatment. This was continued till March 2012. In 2012 a number of claims for medical reimbursement came under the scrutiny of the Vigilance department as a number of irregularities were noticed. It was informed by the sister plants of SAIL that they did not have the practice of reimbursement of alternate method of treatment or had withdrawn the same. If facilities for treatment are not available in the hospital of the Respondent the employees used to be referred to specialized institutions. Discontinuing of reimbursement of expenses incurred on Homeo, Ayurvedic and other alternate treatment will not fall within the ambit of Section-9A of the Industrial Disputes Act. The Respondent has not committed any illegality by withdrawing the facility for reimbursement of expenses incurred on alternate method of treatment. Reimbursement is admissible only in the case of treatment under the allopathic system of medicine. The circular discontinuing the facility was issued in accordance with the service conditions of the employees and prevailing rules. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder in answer to the Counter Statement reiterating the contentions in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W9 and Ext.M1 to Ext.M5.

7. The points for consideration are:

(i) Whether the action of the Respondent in withdrawing the existing facility of reimbursement

on alternative medical treatment to employees is justified?

- (ii) What if any is the relief to which the petitioner is entitled?

The Points

8. The Industrial Dispute is raised by the General Secretary of the Steel Plant Employees Union of the Respondent establishment. It is the case of the petitioner that the employees were enjoying the facility of reimbursement of medical expenses incurred on treatment through alternate methods such as Homeo, Ayurveda, Siddha, etc. and this was continued till 13.02.2012 on which date a circular was issued by the Respondent restricting the right of medical reimbursement towards expenditure incurred by allopathic treatment only. The petitioner has contended that this action of the Respondent is against Section-9A of the ID Act and also against the provisions of the settlement entered into between the Management and the Union.

9. It is beyond doubt that the employees of the Respondent establishment were enjoying the facility of reimbursement of medical expenses incurred on treatment by alternate methods such as Homeo, Ayurvedic, Unani, etc. This is clear even from the Counter Statement of the Respondent. It is stated in the Counter Statement that at the time of setting up of the Steel Plant by the Respondent during the late 1970s and early 1980s it was in the process of setting up its own hospital and for convenience of the employees the system of availing treatment on their own arrangement had been allowed and some of the employees have been availing Homeo and Ayurvedic treatment and this was continued till March 2012 by default and omission as no decision contrary to the same was communicated to the employees. This statement itself implies that from the very inception the employees of the Respondent establishment were enjoying the facility of reimbursement of medical expenditure incurred on treatment by alternate methods of medicines. MW1 has reiterated his case in the Proof Affidavit filed by him also.

10. It is clear that Ext.W2 circular was issued by the Respondent on 13.02.2012 with the intention to do away with the facility of reimbursement of expenditure incurred on resorting to alternate method of medicines. Though it is not specifically stated in the circular, the circular states that reimbursement of medical expenses to the employees and their dependents would be allowed only in case of treatment under the allopathic system of medicine. Thus, alternate method of treatments like Homeo, Ayurvedic, Unani, etc. are taken away from the purview of medical reimbursement.

11. Whether the Respondent is justified in denying the right of reimbursement of expenditure incurred on treatment by alternate method of medicines? As already pointed out

it is clear from the counter statement itself that the facility that was denied by Ext.W2 circular was something that was being enjoyed by the employees from the very inception of the plant itself. Thus by practice and usage the workmen have been enjoying the facility of medical reimbursement on treatment by alternate method of medicine as well. Ext.W1 is the Memorandum of Agreement that was prevailing at the time when the dispute was raised. Clause-5.1 of the agreement is regarding protection of existing benefit availed by the workers. Clause-5.1.1 states that merely as a consequence of the implementation of the agreement any facility, privilege, amenity, benefit, monetary or otherwise or concession to which an employee might be entitled by way of practice or usage shall not be withdrawn or curtailed except in the manner provided for in the agreement. Thus this clause acts as a protection of the practice that was being enjoyed by the workmen. There is nothing in Ext.W1 against enjoyment of the facility for reimbursement by the workmen. Ext.W9, the Memorandum of Agreement that was entered into on 01.07.2014 after the dispute was raised retains the clause in the earlier agreement. So if Ext.W1 is construed and read alongwith Ext.W9 it could be seen that whatever benefits the employees were having by practice or usage were retained.

12. While the agreement was in force the Respondent has issued Ext.W2 circular withdrawing those facilities that were retained by the Agreement. The Respondent has not issued any notice under Section-9A of the ID Act before discontinuing the facility. As pointed out by the petitioner Ext.W2 circular could not be enforced also because it is issued in violation of Section-9A of the ID Act also. Section-9A states that no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the 4th Schedule shall effect such change without giving to the workman, likely to be affected by such change, a notice in the prescribed manner, of the nature of the change proposed to be effected. Item-8 of the 4th Schedule, a condition of service for change of which notice is to be given is withdrawal of any customary concession or privilege or change in usage. So it is apparent that even though the facility enjoyed by the workmen is not included in the service conditions, notice is to be given as it is a customary concession or privilege enjoyed by the workmen. So in the absence of notice the circular has no legal validity. The contention of the Respondent that the sister concerns of the Respondent has not been giving such facility is not an answer to the contention raised by the petitioner. If the facility has become customary privilege it cannot be changed without notice under Section-9A of the ID Act. The act of the Respondent in discontinuing the facility by issuing Ext.W2 could not be approved. The petitioner is entitled to the relief claimed.

13. In view of my discussion above, an award is passed as below:

The Respondent is directed to restore the facility of reimbursement of medical expenses incurred on treatment using alternate methods of medicine.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th March, 2016).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri K.P. Suresh Kumar
Petitioner Union

For the 2nd Party/ : MW1, Sri M. Subba Rao
Management

Documents Marked :

On the petitioner's side

| Ex.No. | Date | Description |
|--------|------------|--|
| Ext.W1 | 29.04.2010 | Memorandum of Agreement (National Joint Committee for the Steel Industry) |
| Ext.W2 | 13.02.2012 | Circular issued by the management of SAIL, Salem Steel Plant on curtailing of reimbursement of expenses incurred on other than Allopathic system of medicine |
| Ext.W3 | 10.03.2012 | Letter to the Director (Pers. & Tech.), SAIL, New Delhi, Camp at Salem on issues/demands |
| Ext.W4 | 17.03.2012 | Notice exhibited to seek the attention of the management on the issues/demands |
| Ext.W5 | 28.03.2012 | Letter to the GM (P&A) SAIL, SSP |
| Ext.W6 | 30.03.2012 | Hand Bill circulated among workers to seek attention of the management to address the genuine issues/demands |
| Ext.W7 | 30.03.2012 | Strike notice issued to the management of SAIL, Salem Steel Plant to resolve the issues/demands |
| Ext.W8 | 25.10.2012 | Minutes of Conciliation Proceeding – advice of ALC (C), Chennai agreed by the unions and the management on the issues/ |

demands where the curtailment of the reimbursement of expenses incurred on Ayurvedic, Homeopathic treatment and other pending issues would be a resolved bilateral level

Ext.W9 01.07.2014 Memorandum of Agreement (National Joint Committee for the Steel Industry)

On the Management's side

| Ex.No. | Date | Description |
|--------|---|--|
| Ext.M1 | - | SAIL Medical Attendance Rules and the Rules regarding reimbursement of expenses towards specialized Medical Treatment not available at the HQ of the employees |
| Ext.M2 | VISA Fax Message Dated 12.11.2011 & BSL/PERS/OD/NW/2012 dated 08.02.2012 And OL/OF/4/1 467 dated 21.11.2011 | Confirmation letter of sister plants/units of the Respondent regarding reimbursement Alternative systems of medicine |
| Ext.M3 | PER/PP/4006 Dated 07.12.2011 | Letter of SAIL Corporate Office regarding follow up the guideline and rules framed at Corporate level on the basis of the direction of the Ministry of Steel, Govt. of India |
| Ext.M4 | Note No. COM/SSP/VOG/2011/16/dated 25.01.2012 & Vig./SSP/QMS/REC/43 dated 16.06.2012 & PL – 1 (13) dated 20.06.2012 | Observations of the Vigilance Department of SAIL/SSP and compliance report |
| Ext.M5 | PL-2(15) dated 27.04.1990 | Format of Offer of the Appointment Letter of Junior Operative Trainee. |